

ASSEMBLY, No. 410

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Assemblyman PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

SYNOPSIS

Revises the "Construction Lien Law."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/21/2010)

1 AN ACT concerning construction liens, and amending,
2 supplementing and repealing various sections of P.L.1993, c.318.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 2 of P.L.1993, c.318 (C.2A:44A-2) is amended to
8 read as follows:

9 2. As used in this act:

10 “Claimant” means a person **[**, as defined in R.S. 1:1-2,**]** having the
11 right to file a lien claim on real property pursuant to **[**the provisions
12 of**]** this act.

13 “Community association” means a condominium association, a
14 homeowners’ association, a cooperative association, or any other
15 entity created to administer or manage the common elements and
16 facilities of a real property development that, directly or through an
17 authorized agent, enters into a contract for improvement of the real
18 property.

19 “Contract” means any agreement, or amendment thereto, in
20 writing, signed by the party against whom the lien claim is asserted
21 and evidencing the respective responsibilities of the contracting
22 parties, **[**which, in**]** including, but not limited to, price or other
23 consideration to be paid, and a description of the benefit or
24 improvement to the real property subject to a lien. In the case of a
25 supplier, “contract” shall include a delivery or order slip referring to
26 the site or project to which materials have been delivered or where
27 they were used and signed by the **[**owner, contractor, or subcontractor
28 having a direct contractual relation with a contractor, or an authorized
29 agent of any of them**]** party against whom the lien claim is asserted or
30 that party’s authorized agent. As referenced herein: the phrase “party
31 against whom the lien claim is asserted” means the party in direct
32 privity of contract with the party asserting the lien claim; and the term
33 “signed” means a writing that bears a mark or symbol intended to
34 authenticate it.

35 “Contract price” means the amount specified in a contract for the
36 provision of work, services, material or equipment.

37 “Contractor” means any person in direct privity of contract with
38 the owner of real property, or with a community association in
39 accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), for
40 improvements **[**thereto**]** to the real property. A construction manager
41 who enters into a single contract with an owner or a community
42 association for the performance of all construction work within the
43 scope of a construction manager’s contract, a construction manager
44 who enters into a subcontract, or a construction manager who is

EXPLANATION – Matter enclosed in bold-faced brackets **[thus**]** in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 designated as an owner's or community association's agent without
2 entering into a subcontract is also a "contractor" for purposes of this
3 act. A licensed architect, engineer or land surveyor or certified
4 landscape architect who is not a salaried employee of the contractor, or
5 the owner or community association, performing professional services
6 related to the improvement of property in direct contract with the
7 property owner shall be considered a "contractor" for the purposes of
8 this act.

9 "County clerk" means the clerk of the county in which real
10 property to be improved is situated.

11 "Day" means a calendar day unless otherwise designated.

12 "Dwelling" means a one-, two- or three-family residence that is
13 freestanding or shares a party wall without common ownership interest
14 in that party wall. A dwelling may be part of a real property
15 development.

16 "Equipment" means any machinery or other apparatus, including
17 rental equipment delivered to the site to be improved or used on the
18 site to be improved, whether for incorporation in the improved real
19 property or for use in the construction of the improvement of the real
20 property **[but not incorporated therein]**. A lien for equipment shall
21 arise only for equipment used on site for the improvement of real
22 property, including equipment installed in the improved real property.
23 In the case of rental equipment, the amount of any lien shall be limited
24 to the rental rates as set forth in the rental contract.

25 "Filing" means the (1) lodging for record and (2) the indexing of
26 the documents authorized to be filed or recorded pursuant to this act in
27 the office of the county clerk in the county where the property subject
28 to the lien is located, or, in the case of real property located in more
29 than one county, in the office of the county clerk of each such county.
30 A document that is "lodged for record" shall mean a document that is
31 delivered to the county clerk and marked by the clerk with a date and
32 time stamp or other mark indicating the date and time received.

33 "First tier lien claimant" means a claimant who is a contractor.

34 "Improvement" means any actual or proposed physical changes to
35 real property **[by]** resulting from the provision of work, **[or]** services,
36 or material by a contractor **[or]** subcontractor, or supplier pursuant
37 to **[the terms of]** a contract, whether or not such physical change is
38 undertaken, and includes the construction, reconstruction, alteration,
39 repair, renovation, demolition or removal of any building or structure,
40 any addition to a building or structure, or any construction or fixture
41 necessary or appurtenant to a building or structure for use in
42 conjunction therewith. "Improvement" includes , but is not limited to,
43 excavation, digging, drilling, drainage, dredging, filling, irrigation,
44 land clearance, grading or landscaping. "Improvement" shall not
45 include the mining of minerals or removal of timber, gravel, soil, or
46 sod which is not integral to or necessitated by the improvement to real
47 property. "Improvement" shall not include public works or

1 improvements to real property contracted for and awarded by a public
2 entity. Any work or services requiring a license for performance
3 including, but not limited to, architectural, engineering, plumbing or
4 electrical construction, shall not constitute an improvement unless
5 performed by a licensed claimant.

6 “Interest in real property” means any ownership, possessory
7 security or other enforceable interest, including, but not limited to, fee
8 title, easement rights, covenants or restrictions, leases and mortgages.

9 “Lien” or “construction lien” means a lien on the owner’s interest
10 in the real property arising pursuant to **the provisions of** this act.

11 “Lien claim” means a claim, by a claimant, for money for the value
12 of work, services, material or equipment furnished in accordance with
13 a contract and based upon the contract price and any amendments
14 thereto, that has been secured by a lien pursuant to this act.

15 “Lien fund” means the pool of money from which one or more lien
16 claims may be paid. The amount of the lien fund shall not exceed the
17 maximum amount for which an owner can be liable. The amount of
18 the lien that attaches to the owner’s interest in the real property cannot
19 exceed the lien fund.

20 “Material” means any goods delivered to, or used on the site to be
21 improved, for incorporation in the improved real property, or for
22 consumption as normal waste in construction operations; or for use on
23 site in the construction or operation of equipment used in the
24 improvement of the real property but not incorporated therein. The
25 term “material” does not include fuel provided for use in motor
26 vehicles or equipment delivered to or used on the site to be improved.

27 “Mortgage” means a loan which is secured by a lien on real
28 property.

29 “Owner” or “owner of real property” means any person, including
30 a tenant, with an **estate or** interest in real property who personally or
31 through an authorized agent enters into a contract for improvement of
32 the real property. “Owner” or “owner of real property” shall not
33 include a “community association” that holds record title to real
34 property or has an interest in real property.

35 “Person” means an individual, corporation, company, association,
36 society, firm, limited liability company, limited liability partnership,
37 partnership, joint stock company or any other legal entity, unless
38 restricted by the context to one or more of the above.

39 “Public entity” includes the State, and any county, municipality,
40 district, public authority, public agency, and any other political
41 subdivision or public body in the State.

42 “Real property development” means all forms of residential and
43 non-residential real property development including, but not limited to,
44 a condominium subject to the “Condominium Act,” P.L.1969, c.257
45 (C.46:8B-1 et seq.), a housing cooperative subject to “The Cooperative
46 Recording Act of New Jersey,” P.L.1987, c.381 (C.46:8D-1 et al.), a
47 fee simple townhouse development, a horizontal property regime as

1 defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and a planned
2 unit development as defined in section 3.3 of P.L. 1975, c.291
3 (C.40:55D-6).

4 “Residential construction,” also referred to as “residential housing
5 construction” or “home construction,” means construction of or
6 improvement to a dwelling, or any portion thereof, or any residential
7 unit, or any portion thereof. In the case of a real property
8 development, “residential construction” or “residential housing
9 construction” or “home construction” also includes: (1) all offsite and
10 onsite infrastructure and sitework improvements required by a
11 residential construction contract, master deed, or other document; (2)
12 the common elements of the development, which may also include by
13 definition the offsite and onsite infrastructure and sitework
14 improvements; and (3) those areas or buildings commonly shared.

15 "Residential construction contract" means **[any written]** a contract
16 for the construction of, or improvement to, a **[one- or two-family]**
17 dwelling, or dwellings or any portion **[of the dwelling, which shall**
18 **include any]** thereof, or a residential unit **[in a condominium subject**
19 **to the provisions of P.L.1969, c.257 (C.46:8B-1 et seq.), any**
20 **residential unit in a housing cooperative, any residential unit contained**
21 **in a fee simple townhouse development, any residential unit contained**
22 **in a horizontal property regime as defined in section 2 of P.L.1963,**
23 **c.168 (C.46:8A-2), and any residential unit contained in a planned unit**
24 **development as defined in section 3.3 of P.L.1975, c.291 (C.40:55D-**
25 **6)], or units, or dwellings, or any portion thereof in a real property**
26 **development.**

27 "Residential purchase agreement" means a **[written]** contract
28 between a buyer and a seller for the purchase of a **[one- or two-**
29 **family]** dwelling, **[any]** or dwellings or a residential unit **[in a**
30 **condominium subject to the provisions of P.L.1969, c.257 (C.46:8B-1**
31 **et seq.), any residential unit in a housing cooperative, any residential**
32 **unit contained in a fee simple townhouse development, any residential**
33 **unit contained in a horizontal property regime as defined in section 2**
34 **of P.L.1963, c.168 (C.46:8A-2), and any residential unit contained in a**
35 **planned unit development as defined in section 3.3 of P.L.1975, c.291**
36 **(C.40:55D-6)] or units in a real property development.**

37 “Residential unit” means a unit in a real property development
38 designed to be transferred or sold for use as a residence, and the design
39 evidenced by a document, such as a master deed or declaration,
40 recorded with the county clerk in the county where the real property is
41 located, or a public offering statement filed with the Department of
42 Community Affairs. “Residential unit” includes a unit designed to be
43 transferred or sold for use as a residence that is part of a multi-use or
44 mixed use development project. “Residential unit” shall not include a
45 unit designed for rental purposes or a unit designed to be transferred or
46 sold for non-residential use.

1 “Second tier lien claimant” means a claimant who is, in relation to
2 a contractor: (1) a subcontractor; or (2) a supplier.

3 “Services” means professional services performed by a licensed
4 architect, engineer, ~~or~~, land surveyor, or certified landscape
5 architect, who is not a salaried employee of the contractor, a
6 subcontractor or the owner and who is in direct privity of contract with
7 the owner for the preparation of plans, documents, studies, or the
8 provision of other services by a licensed architect, engineer or land
9 surveyor prepared in connection with ~~a proposed or an actual~~
10 ~~physical change~~ improvement to real property, whether or not such
11 ~~physical change~~ improvement is undertaken.

12 “State” means the State of New Jersey and any office, department,
13 division, bureau, board, commission or agency of the State.

14 “Subcontractor” means any person providing work or services in
15 connection with the improvement of real property pursuant to a
16 contract with a contractor or pursuant to a contract with a
17 subcontractor in direct privity of contract with a contractor.

18 “Supplier” means any supplier of material or equipment, including
19 rental equipment, having a direct privity of contract with an owner,
20 community association, contractor or subcontractor in direct privity of
21 contract with a contractor. The term “supplier” shall not include a
22 person who supplies fuel for use in motor vehicles or equipment
23 delivered to or used on the site to be improved or a seller of personal
24 property who has a security agreement providing a right to perfect
25 either a security interest pursuant to Title 12A of the New Jersey
26 Statutes or a lien against the motor vehicle pursuant to applicable law.

27 “Third tier lien claimant” means a claimant who is a subcontractor
28 to a second tier lien claimant or a supplier to a second tier lien
29 claimant.

30 “Work” means any activity, including , but not limited to, labor,
31 performed in connection with the improvement of real property. The
32 term “work” includes architectural, engineering or surveying services
33 provided by salaried employees of a contractor or subcontractor, as
34 part of the work of the contractor or subcontractor, provided, however,
35 that the right to file a lien claim for those services shall be limited to
36 the contractor or subcontractor.

37 (cf: P.L.1995, c.392, s.1)

38

39 2. Section 3 of P.L.1993, c.318 (C.2A:44A-3) is amended to
40 read as follows:

41 3. a. Any contractor, subcontractor or supplier who provides
42 work, services, material or equipment pursuant to a contract, shall
43 be entitled to a lien for the value of the work or services performed,
44 or materials or equipment furnished in accordance with the contract
45 and based upon the contract price, subject to ~~the provisions of~~
46 ~~sections 9 and 10 of this act~~ 6, 9, and 10 of P.L.1993, c.318
47 (C.2A:44A-6, 2A:44A-9 and 2A:44A-10). The lien shall attach to

1 the interest of the owner **[in]** or unit owner of the real property
2 development, or be filed against the community association, in
3 accordance with this section.

4 b. For purposes of this section,

5 (1) “interest of the owner of the real property development”
6 includes interest in any residential or nonresidential units not yet
7 sold or transferred and the proportionate undivided interests in the
8 common elements attributable to those units;

9 (2) “interest of the unit owner” includes the proportionate
10 undivided interests in the common elements of the real property
11 development.

12 (3) “unit owner” means an owner of an interest in a residential
13 or nonresidential unit who is not a developer of the property and
14 acquires the unit after the master deed or master declaration is
15 recorded, or after the public offering statement is filed with the
16 Department of Community Affairs; and

17 c. In the case of a condominium, notwithstanding the
18 provisions of the “Condominium Act,” P.L.1969, c.257 (C.46:8B-1
19 et seq.), or in the case of any other real property development with
20 common elements or common areas or facilities, if the contract is:

21 (1) with the owner of the real property development, then the
22 lien shall attach to the interest of the owner of the real property
23 development;

24 (2) with the community association, the lien claim shall be filed
25 against the community association but shall not attach to any real
26 property.

27 In either case, if the work, services, material or equipment are
28 performed or furnished as part of the common elements or facilities
29 of a real property development, the lien shall not attach to the
30 interest of the unit owner.

31 d. If the work, services, material or equipment are performed or
32 furnished solely within or as part of a residential or nonresidential
33 unit, the lien shall attach only to the interest of the unit owner.

34 e. If a tenant contracts for improvement of the real property,
35 the lien shall attach to the leasehold estate of the tenant and to the
36 interest in the property of any person who:

37 (1) has expressly authorized the contract for improvement **[has**
38 not been authorized] in writing **[by the owner of a fee simple**
39 interest in the improved real property, the lien shall attach only to
40 the leasehold interest of the tenant] signed by the person against
41 whom the lien claim is asserted, which writing provides that the
42 person’s interest is subject to a lien for this improvement;

43 (2) has paid, or agreed in writing to pay, the majority of the cost
44 of the improvement; or

45 (3) is a party to the lease or sublease that created the leasehold
46 interest of the tenant and the lease or sublease provides that the
47 person’s interest is subject to a lien for the improvement.

1 f. If an interest in real property is lawfully conveyed after
2 work, services, material, or equipment are performed or furnished
3 but before a lien attaches, the lien shall attach only to the interest
4 retained by the owner or unit owner or community association, as
5 the case may be, who contracted for the work, services, material or
6 equipment and not to the interest previously conveyed.

7 g. Nothing in this act shall be construed to limit the right of
8 any claimant from pursuing any other remedy provided by law.
9 (cf: P.L.1993, c.318, s.3)

10
11 3. Section 6 of P.L.1993, c.318 (C.2A:44A-6) is amended to read
12 as follows:

13 6. **[A lien claim shall be signed, acknowledged and verified by**
14 **oath of the claimant or, in the case of a partnership or corporation, a**
15 **partner or duly authorized officer thereof, and filed with the county**
16 **clerk not later than 90 days following the date the last work, services,**
17 **material or equipment was provided for which payment is claimed.**
18 **No lien shall attach, or be enforceable under the provisions of this act**
19 **and, in the case of a residential construction contract, compliance with**
20 **sections 20 and 21 of this act, unless the lien claim is filed in the form,**
21 **manner and within the time provided by this section and section 8 of**
22 **this act, and a copy thereof served on the owner and, if any, the**
23 **contractor and the subcontractor, against whom the claim is asserted,**
24 **pursuant to section 7 of this act.]**

25 a. A contractor, subcontractor or supplier entitled to file a lien
26 pursuant to section 3 of P.L.1993, c.318 (C.2A:44A-3) shall do so
27 according to the following process:

28 (1) The lien claim form as provided by section 8 of P.L.1993,
29 c.318 (C.2A:44A-8) shall be signed, acknowledged and verified by
30 oath of the claimant setting forth:

31 (a) the specific work or services performed, or material or
32 equipment provided pursuant to contract; and

33 (b) the claimant's identity and contractual relationship with the
34 owner or community association and other known parties in the
35 construction chain.

36 (2) In all cases except those involving a residential construction
37 contract, the lien claim form shall then be lodged for record within 90
38 days following the date the last work, services, material or equipment
39 was provided for which payment is claimed. In the case of a
40 residential construction contract, the lien claim form shall be lodged
41 for record, as required by paragraph (8) of subsection b. of section 21
42 of P.L.1993, c.318 (C.2A:44A-21), not later than 10 days after receipt
43 by the claimant of the arbitrator's determination, and within 120 days
44 following the date the last work, services, material or equipment was
45 provided for which payment is claimed. If requested, at the time of
46 lodging for record, the clerk shall provide a copy of the lien claim
47 form marked with a date and time received.

1 b. A lien shall not attach or be enforceable unless the lien claim or
2 other document permitted to be filed is:

3 (1) filed in the manner and form provided by this section and
4 section 8 of P.L.1993, c.318 (C.2A:44A-8); and

5 (2) a copy thereof served in accordance with section 7 of P.L.1993,
6 c.318 (C.2A:44A-7), except that every document lodged for record
7 that satisfies the requirements of this section, even if not yet filed, shall
8 be enforceable against parties with notice of the document. A
9 document shall be first filed, however, in order to be enforceable
10 against third parties without notice of the document, including, but not
11 limited to, an owner, bona fide purchaser, mortgagee, grantee of an
12 easement, or a lessee or a grantee of any other interest in real estate.

13 c. In the case of a residential construction contract the lien claim
14 shall also comply with section 20 of P.L.1993, c.318 (C.2A:44A-20)
15 and section 21 of P.L.1993, c.318 (C.2A:44A-21).

16 d. For purposes of this act, warranty or other service calls, or
17 other work, materials or equipment provided after completion or
18 termination of a claimant's contract shall not be used to determine the
19 last day that work, services, material or equipment was provided.

20 (cf: P.L.1993, c.318, s.6)

21
22 4. Section 7 of P.L.1993, c.318 (C.2A:44A-7) is amended to read
23 as follows:

24 7. a. Within 10 [business] days following the [filing] lodging
25 for record of a lien claim, the claimant shall [, by personal service or
26 registered or certified mail, return receipt requested, postage prepaid,]
27 serve [or mail] on the owner, or community association in accordance
28 with section 3 of P.L.1993, c.318 (C.2A:44A-3), and, if any, the
29 contractor and subcontractor against whom the claim is asserted, a
30 copy of the completed and signed lien claim [as] substantially in the
31 form prescribed [in] by section 8 of [this act] P.L.1993, c.318
32 (C.2A:44A-8) and marked "received for filing" or a similar stamp with
33 a date and time or other mark indicating the date and time received by
34 the county clerk. Service shall be by personal service as prescribed by
35 the Rules of Court adopted by the Supreme Court of New Jersey or by:

36 (1) simultaneous registered or certified mail or commercial courier
37 whose regular business is delivery service; and

38 (2) ordinary mail addressed to the last known business or residence
39 address [or place of residence] of the owner [and, if any, of the] or
40 community association, contractor [and the] or subcontractor[,
41 against whom the claim is asserted. Proof of timely mailing shall
42 satisfy the requirement of service of the lien claim]. A lien claim
43 served upon a community association need not be served upon
44 individual "unit owners" as defined in section 3 of P.L.1993, c.318
45 (C.2A:44A-3).

46 b. The service of the lien claim provided for in this section shall be
47 a condition precedent to enforcement of the lien; however, the service

1 of the lien claim outside the prescribed time period shall not preclude
2 enforceability unless the party not timely served proves by a
3 preponderance of the evidence that the late service has materially
4 prejudiced its position. Disbursement of funds by the owner,
5 community association, a contractor or a subcontractor who has not
6 been properly served, or the creation or conveyance of an interest in
7 real property by **[the] an owner who has not been properly served,**
8 **[without actual knowledge of the filing of the lien claim,]** shall
9 constitute prima facie evidence **[that the party has been materially**
10 **prejudiced] of material prejudice.**

11 (cf: P.L.1993, c.318, s.7)

12

13 5. Section 8 of P.L.1993, c.318 (C.2A:44A-8) is amended to read
14 as follows:

15 8. The lien claim shall be filed in substantially the following
16 form:

17

18

CONSTRUCTION LIEN CLAIM

19

20

[TO THE CLERK, COUNTY OF :]

21

22

In accordance with the terms and provisions of the "Construction
23 Lien Law," P.L.1993, c.318 (C.2A:44A-1 et al.), notice is hereby
24 given that:

25

26

1. (Name of claimant) of (address of claimant) has on (date)
27 claimed a construction lien against the below stated real property of
28 (owner against whose property the lien is claimed), in the amount of
29 (\$), for the value of the work, services, material or equipment
30 provided in accordance with a contract with (name of contracting
31 party with whom claimant has a contract) for the following work,
32 services, materials or equipment:

33

a.

34

b.

35

c.(etc.)

36

2. The amount due for work, services, materials or equipment
37 delivery provided by claimant in connection with the improvement
38 of the real property, and upon which this lien claim is based, is as
39 follows:

40

Total contract amount: \$

41

Amendments to contract: \$

42

Total contract amount and amendments to contract:

43

\$

44

Less: Agreed upon credits: \$

45

Contract amount paid to date: \$

46

Amendments to contract amount paid to

47

date: \$

1 TOTAL REDUCTIONS FROM CONTRACT AMOUNT
2 AND AMENDMENTS TO
3 CONTRACT: \$

4 TOTAL LIEN CLAIM AMOUNT: \$

5 Notice of Unpaid Balance and Right to File Lien (if any)
6 was previously filed with the County Clerk of County on
7 19 as No. in Book Page .

8 3. This construction lien is claimed against the interest
9 of (name) as (check one):

10 Owner

11 Lessee

12 Other (describe):

13 in that certain tract or parcel of land and premises described as
14 Block , Lot , on the tax map of the of , County of ,
15 State of New Jersey, for the improvement of which property the
16 aforementioned work, services, materials or equipment was
17 provided.

18 4. The work, services, materials or equipment was provided
19 pursuant to the terms of a written contract (or, in the case of a
20 supplier, a delivery or order slip signed by the owner, contractor, or
21 subcontractor having a direct contractual relation with a contractor,
22 or an authorized agent of any of them), dated , between (claimant)
23 and (name of other contracting party) of (address).

24 5. The date of the provision of the last work, services, material
25 or equipment for which payment is claimed is (date).

26

27 NOTICE TO OWNER OF REAL PROPERTY

28 Your real estate may be subject to sale to satisfy the amount
29 asserted by this claim. However, your real estate cannot be sold
30 until the facts and issues which form the basis of this claim are
31 decided in a legal proceeding before a court of law. The lien
32 claimant is required by law to commence suit to enforce this claim.

33 The claimant filing this lien claim shall forfeit all rights to
34 enforce the lien and shall be required to discharge the lien of record,
35 if the claimant fails to bring an action in the Superior Court, in the
36 county in which the real property is situated, to establish the lien
37 claim:

38 1. Within one year of the date of the last provision of work,
39 services, material or equipment, payment for which the lien claim
40 was filed; or

41 2. Within 30 days following receipt of written notice, by
42 personal service or certified mail, return receipt requested, from the
43 owner requiring the claimant to commence an action to establish the
44 lien claim.

45 You will be given proper notice of the proceeding and an
46 opportunity to challenge this claim and set forth your position. If,
47 after you (and/or your contractor or subcontractor) have had the

1 opportunity to challenge this lien claim, the court of law enters a
2 judgment against you and in favor of the claimant filing this lien
3 claim, and thereafter you fail to pay that judgment, your real estate
4 may then be sold to satisfy the judgment.

5 You may choose to avoid subjecting your real estate to sale by
6 doing either of the following:

7 1. You (or your contractor or subcontractor) can pay the
8 claimant and obtain a discharge of lien claim from the claimant; or

9 2. You (or your contractor or subcontractor) can cause the lien
10 claim to be discharged by filing a surety bond or making a deposit
11 of funds as provided for in section 31 of P.L.1993, c.318
12 (C.2A:44A-31).

13 If you (or your contractor or subcontractor) choose to pay the
14 claimant under 1. above, you will lose your right to challenge this
15 lien claim in a legal proceeding before a court of law.

16 If you (or your contractor or subcontractor) choose to discharge
17 the lien claim by filing a surety bond or making a deposit of funds
18 as provided in section 31 of P.L.1993, c.318 (C.2A:44A-31), you
19 will retain your right to challenge this lien claim in a legal
20 proceeding before a court of law.

21

22 **NOTICE TO SUBCONTRACTOR OR CONTRACTOR:**

23 This lien has been filed with the county clerk and served upon
24 the owner of the real estate. This lien places the owner on notice
25 that the real estate may be sold to satisfy this claim unless the
26 owner pays the claimed sum to this claimant.

27

28 Signed

29

30 For
31 Individual, Firm or Corporation

32 Date:

33

34 **CLAIMANT'S REPRESENTATION AND VERIFICATION**

35 Claimant represents and verifies that:

36 1. The amount claimed herein is due and owing at the date of
37 filing, pursuant to claimant's contract described in the construction
38 lien claim.

39 2. The work, services, material or equipment for which this lien
40 claim is filed was provided exclusively in connection with the
41 improvement of the real property which is the subject of this claim.

42 3. This claim has been filed within 90 days from the last date
43 upon which the work, services, materials or equipment for which
44 payment is claimed was provided.

45 4. The foregoing statements made by me are true, to the best of
46 my knowledge. I am aware that if any of the foregoing statements
47 made by me are false, this construction lien claim will be void and

1 that I will be liable for damages to the owner or any other person
2 injured as a consequence of the filing of this lien claim.

3

4

Name of Claimant

5

Signed

6

Type or Print Name and Title

7

Date:]

8

9

TO THE CLERK, COUNTY OF _____ :

10

In accordance with the "Construction Lien Law," P.L.1993,
11 c.318 (C.2A:44A-1 et al.), notice is hereby given that (only complete
12 those sections that apply):

13

1. On (date), I, (name of claimant), individually, or as a partner of
14 the claimant known as (name of partnership), or an officer/member of the
15 claimant known as (name of corporation or LLC) (circle one and fill in name as
16 applicable), located at (business address of claimant), claim a
17 construction lien against the real property of (name of owner of property
18 subject to lien), in that certain tract or parcel of land and premises
19 described as Block _____, Lot _____, on the tax map of the (municipality)
20 of _____, County of _____, State of New Jersey, (or if no Block and Lot
21 is assigned, a metes and bounds or other description of the property) in the
22 amount of \$(lien claim amount), as calculated below for the value of the
23 work, services, material or equipment provided. (If the claim is against a
24 community association in accordance with section 3 of P.L.1993, 318 (C.2A:44A-3)
25 set forth the name of the community association and the name and location of the
26 property development.) The lien is claimed against the interest of the
27 owner, unit owner, or against the community association in accordance
28 with section 3 of P.L.1993, 318 (C.2A:44A-3) or other party (circle one;
29 if "other", describe: _____).

30

2. In accordance with a written contract for improvement of the
31 above property, dated _____, with the property owner, community
32 association, contractor, or subcontractor (circle one), named or known
33 as (name of appropriate party), and located at (address of owner, unit owner,
34 community association, contractor or subcontractor), this claimant performed
35 the following work or provided the following services, material or
36 equipment:

37

a. _____

38

b. _____

39

c. _____ etc.

40

3. The date of the provision of the last work, services, material or
41 equipment for which payment is claimed is _____, 20__.

42

4. The amount due for work, services, material or equipment
43 delivery provided by claimant in connection with the improvement of
44 the real property, and upon which this lien claim is based, is calculated
45 as follows:

46

A. Initial Contract Price: \$ _____

1 B. Executed Amendments to Contract Price/Change Orders:
2 \$ _____
3 C. Total Contract Price (A + B) = \$ _____
4 D. If Contract Not Completed, Value Determined in Accordance
5 with the Contract of Work Completed or Services, Material,
6 Equipment Provided : _____
7 E. Total from C or D (whichever is applicable): \$ _____
8 F. Agreed upon Credits: \$ _____
9 G. Amount Paid to Date: \$ _____
10 TOTAL LIEN CLAIM AMOUNT E - [F + G] =
11 \$ _____

12
13 NOTICE OF UNPAID BALANCE AND ARBITRATION
14 AWARD

15
16 This claim (check one) does _____ does not _____ arise from a
17 Residential Construction Contract. If it does, complete 5 and 6 below;
18 if not residential, complete 5 below, only if applicable. If not
19 residential and 5 is not applicable, skip to Claimant's Representation
20 and Verification.

21 5. A Notice of Unpaid Balance and Right to File Lien (if any) was
22 previously filed with the County Clerk of _____ County
23 on _____, 20 _____ as No. _____, in Book _____ and Page
24 _____.

25 6. An award of the arbitrator (if residential) was issued on _____
26 in the amount of \$ _____.

27
28 CLAIMANT'S REPRESENTATION AND VERIFICATION

29 Claimant represents and verifies under oath that:

30 1. I have authority to file this claim.

31 2. The claimant is entitled to the amount claimed at the date of
32 lodging for record of the claim, pursuant to claimant's contract
33 described above.

34 3. The work, services, material or equipment for which this lien
35 claim is filed was provided exclusively in connection with the
36 improvement of the real property which is the subject of this claim.

37 4. This claim form has been lodged for record with the County
38 Clerk where the property is located within 90 or, if residential
39 construction, 120 days from the last date upon which the work,
40 services, material or equipment for which payment is claimed was
41 provided.

42 5. This claim form has been completed in its entirety to the best
43 of my ability and I understand that if I do not complete this form in its
44 entirety, the form may be deemed invalid by a court of law.

45 6. This claim form will be served as required by statute upon the
46 owner or community association, and upon the contractor or
47 subcontractor against whom this claim has been asserted, if any.

1 NOTICE TO OWNER OF REAL PROPERTY
2 NOTICE TO CONTRACTOR OR SUBCONTRACTOR, IF
3 APPLICABLE
4

5 The owner's real estate may be subject to sale to satisfy the amount
6 asserted by this claim. However, the owner's real estate cannot be sold
7 until the facts and issues which form the basis of this claim are decided
8 in a legal proceeding before a court of law. The lien claimant is
9 required by law to commence suit to enforce this claim.

10 The claimant filing this lien claim shall forfeit all rights to enforce
11 the lien claim and shall be required to discharge the lien claim of
12 record, if the claimant fails to bring an action in the Superior Court, in
13 the county in which the real property is situated, to establish the lien
14 claim:

15 1. Within one year of the date of the last provision of work,
16 services, material or equipment, payment for which the lien claim was
17 filed; or

18 2. Within 30 days following receipt of written notice, by personal
19 service or certified mail, return receipt requested, from the owner or
20 community association, contractor, or subcontractor against whom a
21 lien claim is filed, as appropriate, requiring the claimant to commence
22 an action to establish the lien claim.

23 You will be given proper notice of the proceeding and an
24 opportunity to challenge this claim and set forth your position. If, after
25 the owner (and/or contractor or subcontractor) has had the opportunity
26 to challenge this lien claim, the court of law enters a judgment against
27 any of you and in favor of the claimant filing this lien claim, and
28 thereafter judgment is not paid, the owner's real estate may then be
29 sold to satisfy the judgment. A judgment against a community
30 association for a claim of work, services, material or equipment
31 pursuant to a contract with that community association cannot be
32 enforced by a sale of real estate.

33 The owner may choose to avoid subjecting the real estate to sale by
34 the owner (or contractor) either:

35 1. paying the claimant and obtaining a discharge of lien claim from
36 the claimant, by which the owner will lose the right to challenge this
37 lien claim in a legal proceeding before a court of law; or

38 2. causing the lien claim to be discharged by filing a surety bond or
39 making a deposit of funds as provided for in section 31 of P.L.1993,
40 c.318 (C.2A:44A-31), by which the owner will retain the right to
41 challenge this lien claim in a legal proceeding before a court of law.

42 (cf: P.L.1993, c.318, s.8)

43
44 6. Section 9 of P.L.1993, c.318 (C.2A:44A-9) is amended to
45 read as follows:

46 9. a. The amount of a lien claim shall **[be limited to]** not exceed
47 the unpaid portion of the contract price [, or any unpaid portion

1 thereof, whichever is less,] of the claimant's contract for the work,
2 services, material or equipment provided.

3 b. Except as set forth in sections 15 and 21 of P.L.1993, c.318,
4 (C.2A:44A-15 and 2A:44A-21), and subject to section 7 of P.L.1993,
5 c.318 (C.2A:44A-7) and subsection c. of this section, the lien fund
6 shall not exceed:

7 (1) in the case of a first tier lien claimant or second tier lien
8 claimant, the earned amount of the contract between the owner and the
9 contractor minus any payments made prior to service of a copy of the
10 lien claim; or

11 (2) in the case of a third tier lien claimant, the lesser of: (a) the
12 amount in paragraph (1) above; or (b) the earned amount of the
13 contract between the contractor and the subcontractor to the contractor,
14 minus any payments made prior to service of a copy of the lien claim.

15 c. A lien fund regardless of tier shall not be reduced by payments
16 by the owner, or community association in accordance with section 3
17 of P.L.1993, c.318 (C.2A:44A-3), that do not discharge the obligations
18 for the work performed or services, material or equipment provided,
19 including, but not limited to:

20 (1) payments not in accordance with written contract provisions;

21 (2) payments yet to be earned upon lodging for record of the lien
22 claim;

23 (3) liquidated damages;

24 (4) collusive payments;

25 (5) use of retainage to make payments to a successor contractor
26 after the lien claim is lodged for record; or

27 (6) setoffs or backcharges, absent written agreement by the
28 claimant, except for any setoffs upheld by judgment that are first
29 determined by: (a) arbitration or alternate dispute resolution in a
30 proceeding conducted in accordance with section 21 of P.L.1993,
31 c.318 (C.2A:44A-21); or (b) any other alternate dispute resolution
32 agreed to by the parties.

33 d. Subject to subsection c. above, no lien fund exists, if, at the
34 time of service of a copy of the lien claim, the owner or community
35 association has fully paid the contractor for the work performed or for
36 services, material or equipment provided.

37 e. For purposes of a lien fund calculation, the “earned amount of
38 the contract” is the contract price unless the party obligated to perform
39 has not completed the performance in which case the “earned amount
40 of the contract” is the value, as determined in accordance with the
41 contract, of the work performed and services, material or equipment
42 provided.

43 f. If more than one lien claimant will participate in a lien fund,
44 the lien fund shall be established as of the date of the first of the
45 participating lien claims lodged for record unless the earned amount of
46 the contract increases, in which case the lien fund shall be calculated
47 from the date of the increase.

1 g. No lien rights shall exist for other than first, second, or third
2 tier lien claimants.

3 (cf: P.L.1993, c.318, s.9)

4
5 7. Section 10 of P.L.1993, c.318 (C.2A:44A-10) is amended to
6 read as follows:

7 10. Subject to the limitations of **[section 6 of this act]** sections 3
8 and 6 of P.L.1993, c.318 (C.2A:44A-3 and 2A:44A-6), the lien
9 **[claim]** shall attach to the interest of the owner from and after the time
10 of filing of the lien claim. Except as provided by section 20 of **[this**
11 **act]** P.L.1993, c.318 (C.2A:44A-20), no lien [claim] shall attach to
12 the [estate or] interest acquired by a bona fide purchaser [first
13 recorded or lodged for record; nor shall a] as evidenced by a
14 recordable document recorded or lodged for record before the date of
15 filing of the lien claim . A lien claim [enjoy] shall not, except as
16 provided by sections 20 and 21 of P.L.1993, c.318 (C.2A:44A-20 and
17 2A:44A-21), have a priority over any mortgage, judgment or other lien
18 or interest in real estate first recorded, lodged for record, filed or
19 docketed. A lien claim filed under [the provisions of] this act shall be
20 subject to the effect of a [notice] Notice of [settlement] Settlement
21 filed pursuant to P.L.1979, c.406 (C.46:16A-1 et seq.). [Except as set
22 forth in sections 15 and 21 of this act, the maximum amount for which
23 an owner will be liable or an interest in real property subject to a lien
24 under this act for one or more lien claims filed pursuant to this act
25 shall not be greater than:

26 a. In the case of a lien claim filed by a contractor, the total amount
27 of the contract price of the contract between the owner and the
28 contractor less the amount of payments duly made, if any, prior to
29 receipt of a copy of the lien claim pursuant to section 7 of this act, by
30 the owner to the contractor or any other claimant who has filed a lien
31 claim or a Notice of Unpaid Balance and Right to File Lien pursuant
32 either to a contract with the contractor and any subcontractor or
33 supplier, or a contract between a subcontractor of the contractor and
34 any supplier or other subcontractor; or

35 b. In the case of lien claim filed by a subcontractor or supplier, the
36 amount provided in subsection a. of this section, or the contract price
37 of the contract between the contractor or subcontractor and the
38 subcontractor or supplier, as applicable, pursuant to which the work,
39 services, materials or equipment is provided by the subcontractor or
40 supplier, less the amount of payments duly made, if any, prior to
41 receipt of a copy of the lien claim pursuant to section 7 of this act, to
42 the contractor or supplier or any other claimant who has filed a lien
43 claim or a Notice of Unpaid Balance and Right to File Lien pursuant to
44 a contract with such subcontractor or supplier, whichever is less. **]**

45 (cf: P.L.1993, c.318, s.10)

1 8. Section 11 of P.L.1993, c.318 (2A:44A-11) is amended to
2 read as follows:

3 11. a. A lien claim may be amended **【**by the filing of an
4 amendment with the county clerk**】** for any appropriate reason,
5 including but not limited to correcting inaccuracies or errors in the
6 original lien claim form, or revising the amount claimed because of:

7 (1) additional work performed or services, material, or equipment
8 provided;

9 (2) the release of a proportionate share of an interest in real
10 property from the lien in accordance with section 18 of P.L.1993,
11 c.318 (C.2A:44A-18); or

12 (3) the partial payment of the lien claim.

13 A lien claim may not be amended to cure a violation of section 15
14 of P.L.1993, c.318 (C.2A:44A-15).

15 b. The amended lien claim, which shall be filed with the county
16 clerk, shall comply with all the conditions and requirements for the
17 filing of **【**a an original lien claim, including but not limited to the
18 notice requirements of section 7 of **【**this act, as well as the conditions
19 and requirements of this section**】** P.L.1993, c.318 (C.2A:44A-7) and
20 shall be subject to the limitations of **【**section 10 of this act**】** sections 9
21 and 10 of P.L.1993, c.318 (C.2A:44A-9 and 2A:44A-10). That portion
22 of the amended lien **【**claim**】** in excess of the amount previously
23 claimed shall attach as of the date of filing of the **【**amended**】** original
24 lien claim. That excess amount shall also be used to calculate the lien
25 fund pursuant to subsection f. of section 9 of P.L.1993, c.318
26 (C.2A:44A-9).

27 c. The amended lien claim shall be filed in substantially the
28 following form:

29

30 AMENDMENT TO CONSTRUCTION LIEN CLAIM

31

32 TO THE CLERK, COUNTY OF _____ :

33

34 1. On (date), the undersigned claimant, (*name of claimant*) of
35 (*address of claimant*), filed a CONSTRUCTION LIEN CLAIM in the
36 amount of (\$ _____) DOLLARS for the value of the work, services,
37 material or equipment provided in accordance with the contract
38 between claimant and (*name*) as of (*date*).

39

40 2. This construction lien claim was claimed against the interest
41 of (*name*) as **【**(check one)**】** (*circle one*): **【**Owner _____ Lessee
42 Other**】** owner, unit owner, community association or other party; (if
43 "other," describe: _____)" in that certain tract or parcel of
44 land and premises described as Block _____, Lot _____, on the tax map
45 of the _____ (municipality) of _____, County of _____, State of
46 New Jersey, for the improvement of which property the

1 aforementioned work, services, **[materials]** material or equipment
2 was provided. *(If the claim was against a community association in
3 accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), set forth the name of
4 the community association and the name and location of the property
5 development.)*

6 3. This amends a lien claim which was previously lodged for
7 record on _____, 20 and filed with the County Clerk
8 of _____ County on _____, **[19]** 20 and recorded on
9 _____, 20 as No. _____ in Book No. _____, Page _____. A
10 Notice of Unpaid Balance and Right to File Lien (if any) was
11 previously filed with the County Clerk of _____ on _____, **[19]**
12 20 and recorded on _____, 20 as No. _____ in Book
13 No. _____, Page _____.

14 4. Amendments to the original claim were recorded in the
15 office of the County Clerk on _____, **[19]** 20 as No. _____ in
16 Book No. _____, Page _____. (Complete if applicable)

17 5. Effective the date of the **[filing]** lodging for record of this
18 AMENDMENT TO CONSTRUCTION LIEN CLAIM, the value of
19 the lien is claimed to be in the total amount of (\$ _____) DOLLARS,
20 inclusive of all prior lien claims or amendments thereof.

21 6. The work, services, material or equipment provided upon
22 which this Amendment is made are:

- 23 a.
- 24 b.
- 25 c. _____ (etc.)

26 7. The date of the provision of the last work, services, material
27 or equipment for which payment is claimed is (date).

28 8. The reason for this amendment is _____

29

30 CLAIMANTS REPRESENTATION AND VERIFICATION

31

32 *(A-4319 for lien claim)*

33

34 NOTICE TO OWNER OF REAL PROPERTY

35

36 *(Same as for lien claim)*

37

38 NOTICE TO SUBCONTRACTOR OR CONTRACTOR

39

40 *(Same as for lien claim)*

41

42 **[CLAIMANT'S REPRESENTATION AND VERIFICATION**

43 **(Same as for lien claim)]**

44 (cf: P.L.1993, c.318, s.11)

45

46 9. Section 12 of P.L.1993, c.318 (C.2A:44A-12) is amended to
47 read as follows:

1 12. Upon receipt of notice of a lien claim, the owner , or
2 community association in accordance with section 3 of P.L.1993,
3 c.318 (C.2A:44A-3), shall be authorized to withhold and deduct the
4 amount claimed from the unpaid part of the contract price that is or
5 thereafter may be due and payable to the contractor or
6 subcontractor, or both. The owner or community association may
7 pay the amount of the lien claim to the claimant unless the
8 contractor or subcontractor against whose account the lien is filed
9 notifies the owner and the lien claimant in writing within 20 days of
10 service of the lien claim upon both the owner or community
11 association and the contractor or subcontractor, that the claimant is
12 not owed the monies claimed and the reasons therefor. Any such
13 payment made by the owner or community association shall
14 constitute a payment made on account of the contract price of the
15 contract with the contractor or subcontractor, or both, against whose
16 account the lien is filed.

17 (cf: P.L.1993, c.318, s.12)

18

19 10. Section 13 of P.L.1993, c.318 (C.2A:44A-13) is amended to
20 read as follows:

21 13. a. **【Each】** The county clerk shall provide a book designated
22 as the "Construction Lien Book" in which **【each clerk】** shall
23 **【enter】** be entered each Notice of Unpaid Balance and Right to File
24 Lien **【and】**, Amended Notice of Unpaid Balance and Right to File
25 Lien, **【and each】** lien claim and amended lien claim, and **【each】**
26 discharge, subordination or release of a lien claim or Notice of
27 Unpaid Balance and Right to File Lien presented for filing pursuant
28 to **【the provisions of】** this act.

29 b. The county clerk shall cause marginal notations to be made
30 upon each filed document **【filed pursuant to this act,】** as follows:

31 (1) upon each Notice of Unpaid Balance and Right to File Lien
32 **【whenever an Amended Notice of Unpaid Balance and Right to File**
33 **Lien or a discharge relative】** , the date an amendment to that Notice
34 or discharge thereof, and related lien claim or amendment thereto is
35 filed;

36 (2) upon each lien claim **【whenever】** , the date an **【amended**
37 **lien claim relative】** amendment thereto is filed; **【upon each Notice**
38 **of Unpaid Balance and Right to File Lien whenever a lien claim or**
39 **amended lien claim relative thereto is filed; upon each lien claim or**
40 **amended lien claim whenever a discharge, subordination or release**
41 **of a lien claim relative thereto is filed. In addition, the clerk shall**
42 **cause a notation of the date of commencement of an action to**
43 **enforce a lien claim to made】** and the date a discharge,
44 subordination or release thereof is filed; and

1 (3) upon the affected lien claim or amended lien claim [relative
2 thereto] , the date of the filing of the Notice of Lis Pendens
3 pertaining to the real property subject to the lien claim.

4 c. The failure of the clerk to cause a marginal notation to be
5 made in accordance with subsection b. of this section shall not
6 affect the validity, priority or enforceability of any document filed
7 pursuant to this act.

8 [c.] d. The county clerk shall provide and maintain [on a daily
9 basis] an index book designated as the "Construction Lien Index
10 Book," setting forth [therein in alphabetical order] alphabetically,
11 and arranged by [the] owners' or community associations' names
12 [of the owners], and by [the] claimants' names [of the claimants],
13 each Notice of Unpaid Balance and Right to File Lien, Amended
14 Notice of Unpaid Balance and Right to File Lien, lien claim,
15 amended lien claim, discharge, subordination and release of a lien
16 claim or Notice of Unpaid Balance and Right to File Lien.

17 [d.] e. Each county clerk shall charge [the following] fees for
18 the filing and marginal notation of the documents authorized to be
19 filed by this act[:

20 Each Notice of Unpaid Balance and Right to File Lien or Amended	
21 Notice of Unpaid Balance and Right to File Lien.....	\$ 4.50
22 Each lien claim or amended lien claim.....	\$ 4.50
23 Each discharge, subordination or release of lien claim or release of	
24 Notice of Unpaid Balance and Right to File	\$ 2.00
25 Each marginal notation	\$ 1.00]

26 as set forth in N.J.S.22A:2-29.

27 (cf: P.L.1993, c.318, s.13)

28
29 11. Section 14 of P.L.1993, c.318 (C.2A:44A-14) is amended to
30 read as follows:

31 14. a. A claimant filing a lien claim shall forfeit all rights to
32 enforce the lien, and shall immediately discharge the lien of record
33 in accordance with section 30 of P.L.1993, c.318 (C.2A:44A-30), if
34 the claimant fails to [bring] commence an action in the Superior
35 Court, in the county in which the real property is situated, to
36 [establish] enforce the lien claim:

37 (1) Within one year of the date of the last provision of work,
38 services, material or equipment, payment for which the lien claim
39 was filed; or

40 (2) Within 30 days following receipt of written notice, by
41 personal service or certified mail, return receipt requested, from the
42 owner , community association, contractor, or subcontractor against
43 whose account a lien claim is filed, requiring the claimant to
44 commence an action to [establish] enforce the lien claim.

45 b. Any lien claimant who forfeits a lien pursuant to [subsection
46 a. of] this section and fails to discharge that lien of record in

1 accordance with section 30 of ~~【this act】~~ P.L.1993, c.318
2 (C.2A:44A-30) , shall be liable for all court costs, and reasonable
3 legal expenses, including , but not limited to, attorneys' fees,
4 incurred by the owner, ~~【the】~~ community association, contractor, or
5 subcontractor, or the total costs and legal expenses of all or any
6 combination of them, in defending or causing the discharge of the
7 lien claim. The court ~~【may】~~ shall, in addition, enter judgment
8 against the claimant who fails to discharge the lien for damages to
9 any of the parties adversely affected by the lien claim.

10 c. ~~【Whenever any claimant shall commence an action in the~~
11 ~~Superior Court of New Jersey to enforce a lien claim as provided by~~
12 ~~this act, the claimant shall cause a Notice of Lis Pendens to be filed~~
13 ~~in the office of the county clerk or register pursuant to the~~
14 ~~provisions of N.J.S.2A:15-6 et seq.】~~ (Deleted by amendment,
15 P.L. , c.) (pending before the Legislature as this bill)

16 d. Any disputes arising out of the improvement which is the
17 subject of a lien claim but which are unrelated to any action to
18 enforce a lien claim may be brought in a separate action or in a
19 separate count in the same action.

20 (cf: P.L.1993, c.318, s.14)

21

22 12. Section 15 of P.L.1993, c.318 (C.2A:44A-15) is amended to
23 read as follows:

24 15. a. If a lien claim is without basis, the amount of the lien
25 claim is willfully overstated, or the lien claim is not ~~【filed】~~ lodged
26 for record in substantially the form or in the manner or at a time
27 not in accordance with ~~【the provisions of】~~ this act, the claimant
28 shall forfeit all claimed lien rights and rights to file subsequent lien
29 claims to the extent of the face amount claimed in the lien claim.
30 The claimant shall also be liable for all court costs, and reasonable
31 legal expenses, including , but not limited to, attorneys' fees,
32 incurred by the owner, community association, contractor or
33 subcontractor, or any combination of owner, community association
34 in accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3),
35 contractor and subcontractor, in defending or causing the discharge
36 of the lien claim. The court shall, in addition, enter judgment
37 against the claimant for damages to any of the parties adversely
38 affected by the lien claim.

39 b. If a defense to a lien claim is without basis, the party
40 maintaining the defense shall be liable for all court costs, and
41 reasonable legal expenses, including , but not limited to, attorneys'
42 fees, incurred by any of the parties adversely affected by the
43 defense to the lien claim. The court shall, in addition, enter
44 judgment against the party maintaining ~~【the frivolous】~~ this defense
45 for damages to any of the parties adversely affected ~~【by said~~
46 ~~defense】~~ thereby.

1 c. If a lien claim is forfeited pursuant to this section, or section
2 14 of **[this act]** P.L.1993, c.318 (C.2A:44A-14), nothing herein
3 shall be construed to bar the filing of a subsequent lien claim,
4 provided, however, any subsequent lien claim shall not include a
5 claim for the work, services, equipment or material claimed within
6 the forfeited lien claim.

7 d. For the purpose of this section “without basis” means
8 frivolous, false, unsupported by a contract, or made with malice or
9 bad faith or for any improper purpose.

10 (cf: P.L.1993, c.318, s.15)

11
12 13. Section 18 of P.L.1993, c.318 (C.2A:44A-18) is amended to
13 read as follows:

14 18. This section shall solely apply to work, services, material or
15 equipment furnished under a residential construction contract. If a
16 lien attaches to an interest in real property, the lien claimant shall
17 release a proportionate share of the interest in real property from the
18 lien upon receipt of payment for that proportionate share. This
19 proportionate share shall be calculated in the following manner:

20 a. If there is a contract between the lien claimant and the owner
21 or other writing signed by the parties which provides for an
22 allocation by lot or tract, or otherwise, that allocation of the
23 proportionate share shall be binding upon the lien claimant. Absent
24 a contract between the lien claimant and the owner or other writing
25 signed by the parties, any allocation made shall be proportionate to
26 each lot if subdivision approval has been granted or to each tract if
27 no subdivision approval is required or has been granted.

28 b. If the work performed by the lien claimant was for a
29 condominium in which a master deed is filed before the lien
30 attaches, or for work performed for a cooperative in which a master
31 declaration is filed before the lien attaches, then the proportionate
32 share shall be allocated in an amount equal to the percentage of
33 common elements attributable to each residential unit, subject to the
34 limitations of subsections b. and c. of section 3 of P.L.1993, c.318
35 (C.2A:44A-3).

36 c. If subsection a. or b. of this section does not apply, then the
37 lien shall not be released as to any portion of the interest in real
38 property **[unless the lien claimant and the owner otherwise agree in**
39 **a writing signed by both parties]**.

40 d. If a lien claimant receives payment of **[its]** the proportionate
41 share but refuses to discharge its lien claim, then upon application
42 to a court having jurisdiction thereof, the court shall order the
43 discharge of the lien claim to the extent of that proportionate share.
44 The lien claimant shall be further subject to **[the provisions of]**
45 section 30 of **[this act]** P.L.1993, c.318 (C.2A:44A-30), and any
46 amounts to be paid shall be paid from the amount due the claimant.

47 (cf: P.L.1993, c.318, s.18)

1 Contract amount paid to date: \$

2

3 Amendments to contract amount paid to date: \$

4

5 TOTAL REDUCTIONS FROM CONTRACT AMOUNT AND
6 AMENDMENTS TO CONTRACT: \$

7

8 TOTAL LIEN CLAIM AMOUNT: \$

9

10 3. This construction lien is to be claimed against the interest of
11 (name) as (check one):

12

13 Owner

14

15 Lessee

16

17 Other (describe): in that certain tract or parcel of land and
18 premises described as Block , Lot , on the tax map of
19 the of , County of , State of New Jersey, for
20 the improvement of which property the aforementioned work,
21 services, materials or equipment was provided.

22 4. The work, services, materials or equipment was provided
23 pursuant to the terms of a written contract (or, in the case of a
24 supplier, a delivery or order slip signed by the owner, contractor, or
25 subcontractor having a direct contractual relation with a contractor,
26 or an authorized agent of any of them), dated , between (claimant)
27 and (name of other contracting party) of (address).

28 5. The date of the provision of the last work, services, material
29 or equipment for which payment is claimed is (date).

30 6. The written contract (is) (is not) (cross out inapplicable
31 portion) a residential construction contract as defined in section 2 of
32 this act.

33 7. This notification has been filed prior or subsequent to
34 completion of the work, services, materials or equipment as
35 described above. The purpose of this notification is to advise the
36 owner and any other person who is attempting to encumber or take
37 transfer of said property described above that a potential
38 construction lien may be filed within the 90 day period following
39 the date of the provision of the last work, services, materials or
40 equipment as set forth in paragraph 5.

41

42 CLAIMANT'S REPRESENTATION AND VERIFICATION

43

44 Claimant represents and verifies that:

45 1. The amount claimed herein is due and owing at the date of
46 filing, pursuant to claimant's contract described in the Notice of
47 Unpaid Balance and Right to File Lien.

1 g. A Notice of Unpaid Balance and Right to File Lien may be
2 amended by the filing of an Amended Notice of Unpaid Balance
3 and Right to File Lien in accordance with the provisions of this
4 section.】

5

6 TO THE CLERK, COUNTY OF _____ :

7

8 NOTICE OF UNPAID BALANCE AND RIGHT TO FILE
9 LIEN

10

11 In accordance with the "Construction Lien Law," P.L.1993,
12 c.318 (C.2A:44A-1 et al.), notice is hereby given that:

13 1. (Name of claimant), individually or as a partner of the claimant
14 known as (Name of partnership), or an officer/member of the claimant
15 known as (Name of corporation or LLC) (Please circle one and fill in name as
16 applicable) located at (Business address of claimant) has on (date) a
17 potential construction lien against the real property of (name of owner
18 of property subject to lien), in that certain tract or parcel of land and
19 premises described as Block _____, Lot _____, on the tax map of the
20 (municipality) of _____, County of _____, State of New Jersey, in
21 the amount of (\$ _____), as calculated below for the value of the
22 work, services, material or equipment provided. (If claim is against a
23 community association in accordance with section 3 of P.L.1993, c.318
24 (C.2A:44A-3), set forth the name of the community association and the name and
25 location of the property development.) The lien is to be claimed against
26 the interest of the owner, unit owner, or other party, or against the
27 community association(circle one; if "other", describe: _____).

28 2. The work, services, material or equipment was provided
29 pursuant to the terms of a written contract (or, in the case of a
30 supplier, a delivery or order slip signed by the owner, community
31 association, contractor, or subcontractor having a direct contractual
32 relation with a contractor, or an authorized agent of any of them),
33 dated _____, between (claimant) and owner, unit owner,
34 community association, contractor or subcontractor (circle one),
35 named or known as(name of contracting party) and located at
36 (address of other contracting party), in the total contract amount of
37 (\$ _____) together with (if applicable) amendments to the total contract
38 amount aggregating (\$ _____).

39 3. In accordance with the above contract, this claimant
40 performed the following work or provided the following services,
41 material or equipment:

42 a. _____

43 b. _____

44 c. _____ etc.

45 4. The date of the provision of the last work, services, material
46 or equipment for which payment is claimed is (date.)

1 5. The amount due for work, services, material or equipment
2 provided by claimant in connection with the improvement of the
3 real property, and upon which this lien claim is based is calculated
4 as follows:

- 5
- 6 A. Initial Contract Price: \$ _____
- 7 B. Executed Amendments to Contract Price/Change Orders:
8 \$ _____
- 9 C. Total Contract Price (A + B) = \$ _____
- 10 D. If Contract Not Completed, Value Determined in Accordance
11 with Contract of Work Completed or Services, Material or
12 Equipment Provided : _____
- 13 E. Total from C or D (whichever is applicable): \$
14 _____
- 15 F. Agreed upon Credits: \$ _____
- 16 G. Amount Paid to Date: \$ _____
- 17 TOTAL LIEN CLAIM AMOUNT E - [F + G] = \$ _____

18

19 6. The written contract (is) (is not) (cross out inapplicable
20 portion) a residential construction contract as defined in section 2 of
21 P.L.1993, c.318 (C.2A:44A-2).

22 7. This notification has been lodged for record prior or
23 subsequent to completion of the work, services, material or
24 equipment as described above. The purpose of this notification is to
25 advise the owner or community association and any other person
26 who is attempting to encumber or take transfer of said property
27 described above that a potential construction lien may be lodged for
28 record within the 90-day period, or in the case of a residential
29 construction contract within the 120-day period, following the date
30 of the provision of the last work, services, material or equipment as
31 set forth in paragraph 4 of this notice.

32

33 CLAIMANT'S REPRESENTATION AND VERIFICATION

34

35 Claimant represents and verifies that:

36

37 1. I have authority to file this Notice of Unpaid Balance and
38 Right to File Lien.

39 2. The claimant is entitled to the amount claimed herein at the
40 date this Notice is lodged for record, pursuant to claimant's contract
41 described in the Notice of Unpaid Balance and Right to File Lien.

42 3. The work, services, material or equipment for which this
43 Notice of Unpaid Balance and Right to File Lien is filed was
44 provided exclusively in connection with the improvement of the
45 real property which is the subject of this Notice of Unpaid Balance
46 and Right to File Lien.

1

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NOTARY PUBLIC

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【b. In the event that the】 c. A claimant 【elects】 electing to file a Notice of Unpaid Balance and Right to File Lien as described above【, it shall not be necessary to】 need not serve a copy 【of said Notice of Unpaid Balance and Right to File Lien】 upon any interested party.

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【c.】 d. After the filing of a Notice of Unpaid Balance and Right to File Lien, any person claiming title to or an 【estate or】 interest in or a lien upon the real property described in the Notice of Unpaid Balance and Right to File Lien, shall be deemed to have acquired said title, 【estate,】 interest or lien with knowledge of the anticipated filing of a lien claim, and shall be subject to the terms, conditions and provisions of that lien claim within the period provided by section 6 of 【this act】 P.L.1993, c.318 (C.2A:44A-6) and as set forth in the Notice of Unpaid Balance and Right to File Lien. A Notice of Unpaid Balance and Right to File Lien filed under 【the provisions of】 this act shall be subject to the effect of a 【notice】 Notice of 【settlement】 Settlement filed pursuant to P.L.1979, c. 406 (C.46:16A-1 et seq.).

19

20

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【d.】 e. The Notice of Unpaid Balance and Right to File Lien shall be effective for 90 days or in the case of a residential construction contract claim for 120 days from the date of the provision of the last work, services, 【materials】 material or equipment delivery for which payment is claimed as set forth in paragraph 【5】 4 of the Notice of Unpaid Balance and Right to File Lien.

25

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29

【e.】 f. The lodging for record or filing of a Notice of Unpaid Balance and Right to File Lien shall not constitute the lodging for record or filing of a lien claim 【in accordance with the provisions of this act,】 nor does it extend the time for the 【filing】 lodging for record of a lien claim, in accordance with 【the provisions of】 this act.

30

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35

【f.】 g. Failure to file a Notice of Unpaid Balance and Right to File Lien shall not affect the claimant's lien rights arising under 【the provisions of】 this act, to the extent that no 【creation,】 conveyance, lease or mortgage of an interest in real property 【has taken place】 occurs prior to the filing of a Notice of Unpaid Balance and Right to File Lien or lien claim.

36

37

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40

【g.】 h. A Notice of Unpaid Balance and Right to File Lien may be amended by the filing of an Amended Notice of Unpaid Balance and Right to File Lien in accordance with 【the provisions of】 this section. (cf: P.L.1993, c.318, s.20)

41

42

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44

45

15. Section 21 of P.L.1993, c.318 (C.2A:44A-21) is amended to read as follows:

21. a. The Legislature finds that the ability to sell and purchase residential housing is essential for the preservation and enhancement of the economy of the State of New Jersey and that

1 while there exists a need to provide contractors, subcontractors and
2 suppliers with statutory benefits to enhance the collection of money
3 for goods, services and materials provided for the construction of
4 residential housing in the State of New Jersey, the ability to have a
5 stable marketplace in which families can acquire homes without
6 undue delay and uncertainty and the corresponding need of lending
7 institutions in the State of New Jersey to conduct their business in a
8 stable environment and to lend money for the purchase or finance of
9 home construction or renovations requires that certain statutory
10 provisions as related to the lien benefits accorded to contractors,
11 subcontractors and suppliers be modified. The Legislature further
12 finds that the construction of residential housing generally involves
13 numerous subcontractors and suppliers to complete one unit of
14 housing and that the multiplicity of lien claims and potential for
15 minor monetary disputes poses a serious impediment to the ability
16 to transfer title to residential real estate expeditiously. The
17 Legislature further finds that the purchase of a home is generally
18 one of the largest expenditures that a family or person will make
19 and that there are a multitude of other State and federal statutes and
20 regulations, including "The New Home Warranty and Builders'
21 Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.) and "The
22 Planned Real Estate Development Full Disclosure Act," P.L.1977,
23 c.419 (C.45:22A-21 et seq.), which afford protection to consumers
24 in the purchase and finance of their homes, thereby necessitating a
25 different treatment of residential real estate as it relates to the rights
26 of contractors, suppliers and subcontractors to place liens on
27 residential real estate. The Legislature declares that separate
28 provisions concerning residential construction will provide a system
29 for balancing the competing interests of protecting consumers in the
30 purchase of homes and the contract rights of contractors, suppliers
31 and subcontractors to obtain payment for goods and services
32 provided.

33 b. The filing of a lien for work, services, material or equipment
34 furnished pursuant to a residential construction contract shall be
35 subject to the following additional requirements:

36 (1) As a condition precedent to the filing of any lien arising
37 under a residential construction contract, a lien claimant shall first
38 file a Notice of Unpaid Balance and Right to File Lien by lodging
39 for record the Notice within 60 days following the last date that
40 work, services, material or equipment were provided for which
41 payment is claimed in accordance with **the provisions of**
42 subsection **[a.] b.** of section 20 of **[this act] P.L.1993, c.318**
43 **(C.2A:44A-20)**, and comply with **[all other provisions] the**
44 **remainder** of this section.

45 (2) Upon **[the filing of] its lodging for record**, a Notice of
46 Unpaid Balance and Right to File Lien, **[service of the Notice of**
47 **Unpaid Balance and Right to File Lien]** shall be **[effected] served**

1 in accordance with the provisions **[of]** for the service of lien claims
2 in section 7 of [this act] P.L.1993, c.318 (C.2A:44A-7).

3 (3) Unless the parties have otherwise agreed in writing to an
4 alternative dispute resolution mechanism, **[simultaneously with the**
5 **service under paragraph (2) of this subsection]** within 10 days from
6 the date the Notice of Unpaid Balance and Right to File Lien is
7 lodged for record, the lien claimant shall also serve a demand for
8 arbitration and fulfill all the requirements and procedures of the
9 American Arbitration Association to institute an expedited
10 proceeding before a single arbitrator designated by the American
11 Arbitration Association. The demand for arbitration may be served
12 in accordance with the provisions for the service of lien claims in
13 section 7 of P.L.1993, c.318 (C.2A:44A-7) along with: (a) a copy of
14 the completed and signed Notice of Unpaid Balance and Right to
15 File Lien; and (b) proof by affidavit that the Notice of Unpaid
16 Balance and Right to File Lien has been lodged for record.

17 If not yet provided at the time of service of the demand for
18 arbitration, a copy of the Notice of Unpaid Balance and Right to
19 File Lien marked “filed” by the clerk’s office shall be provided by
20 the claimant to the parties and the arbitrator, as a condition
21 precedent to the issuance of an arbitrator’s determination.

22 All arbitrations of Notices of Unpaid Balance and Right to File
23 Lien pertaining to the same residential construction shall be
24 determined by the same arbitrator, whenever possible. The claimant,
25 owner, or any other party may also request consolidation in a single
26 arbitration proceeding of the claimant’s Notice of Unpaid Balance and
27 Right to File Lien with any other Notice of Unpaid Balance and Right
28 to File Lien not yet arbitrated but lodged for record by a potential lien
29 claimant whose name was provided in accordance with section 37 of
30 P.L.1993, c.318 (C.2A:44A-37). The request shall be made in the
31 demand for arbitration or, in the case of a request by a person other
32 than the claimant, by letter to the arbitrator assigned to the arbitration
33 or, if none has been assigned, to the appropriate arbitration
34 administrator, within five days of when the demand for arbitration is
35 served. The arbitrator shall grant or deny a request for a consolidated
36 arbitration proceeding at the arbitrator’s discretion.

37 (4) Upon the closing of all hearings in the arbitration, the arbitrator
38 shall make the following determinations: (a) whether the Notice of
39 Unpaid Balance and Right to File Lien was in compliance with section
40 20 of **[this act]** P.L.1993, c.318 (C.2A:44A-20) and whether service
41 was proper under section 7 of **[this act]** P.L.1993, c.318 (C.2A:44A-
42 7); (b) the earned amount of the contract between the owner and the
43 contractor in accordance with section 9 of P.L.1993, c.318 (C.2A:44A-
44 9); (c) the validity and amount of any lien claim which may be filed
45 pursuant to the Notice of Unpaid Balance and Right to File Lien; **[(c)]**
46 (d) the validity and amount of any liquidated or unliquidated setoffs or
47 counterclaims to any lien claim which may be filed; and **[d]** (e) the

1 allocation of costs of the arbitration among the parties. When making
2 the above determination, the arbitrator shall also consider all
3 determinations made by that arbitrator in any earlier arbitration
4 proceeding pertaining to the same residential construction.

5 (5) **[In the event]** If the amount of any setoffs or counterclaims
6 presented in the arbitration **[are unliquidated and]** cannot be
7 determined by the arbitrator in a liquidated amount, the arbitrator,
8 as a condition precedent to the filing of the lien claim, shall order
9 the lien claimant to post a bond, letter of credit or funds with an
10 attorney-at-law of New Jersey, or other such person or entity as
11 may be ordered by the arbitrator in such amount as the arbitrator
12 shall determine to be 110% of the approximate fair and reasonable
13 value of such setoffs or counterclaims, but in no event **[shall the**
14 **bond, letter of credit or funds exceed]** greater than the amount of
15 the lien claim which may be filed. This 110% limitation
16 **[regarding]** for any bond, letter of credit or funds shall also apply
17 to any alternative dispute resolution mechanism to which the parties
18 may agree. When making the above determinations, the arbitrator
19 shall consider all determinations made by that arbitrator in any
20 earlier arbitration proceeding pertaining to the same residential
21 construction.

22 (6) The arbitrator shall make such determinations set forth in
23 paragraphs (4) and (5) of this subsection and the arbitration
24 proceeding shall be completed within 30 days of receipt of the lien
25 claimant's demand for arbitration by the American Arbitration
26 Association unless no response is filed, in which case the arbitrator
27 shall make such determinations and the arbitration proceeding shall
28 be deemed completed within 7 days after the time within which to
29 respond has expired. **[That]** These time **[period]** periods for
30 completion of the arbitration shall not be extended unless otherwise
31 agreed to by the parties and approved by the arbitrator. If an
32 alternative dispute mechanism is alternatively agreed to between the
33 parties, such determination shall be made as promptly as possible
34 making due allowance for all time limits and procedures set forth in
35 this act. The arbitrator shall resolve a dispute regarding the
36 timeliness of the demand for arbitration.

37 (7) Any contractor, subcontractor or supplier whose interests are
38 affected by the filing of a Notice of Unpaid Balance and Right to
39 File Lien under **[section 10 of]** this act shall be permitted to join in
40 such arbitration; but the arbitrator shall not determine the rights or
41 obligations of any such parties except to the extent those rights or
42 obligations are affected by the lien claimant's Notice of Unpaid
43 Balance and Right to File Lien.

44 (8) Upon determination by the arbitrator that there is an amount
45 which, pursuant to a valid lien shall attach to the improvement, the
46 lien claimant shall, within 10 days of the lien claimant's receipt of
47 the determination, **[file]** lodge for record such lien claim in

1 accordance with **【the provisions of】** section 8 of **【this act】**
2 P.L.1993, c.318 (C.2A:44A-8) and furnish any bond, letter of credit
3 or funds required by the arbitrator's decision. The failure to **【file】**
4 lodge for record such a lien claim, or furnish the bond, letter of
5 credit or funds, within the 10-day period, shall cause any lien claim
6 to be invalid.

7 (9) Except for the arbitrator's determination itself, any such
8 determination shall not be considered final in any legal action or
9 proceeding, and shall not be used for purposes of collateral
10 estoppel, res judicata, or law of the case to the extent applicable.
11 Any finding of the arbitrator pursuant to **【the provisions of】** this act
12 shall not be admissible for any purpose in any other action or
13 proceeding.

14 (10) If either the lien claimant or the owner or community
15 association in accordance with section 3 of P.L.1993, c.318
16 (C.2A:44A-3) is aggrieved by the arbitrator's determination, then
17 **【either】** the aggrieved party may institute a summary action in the
18 Superior Court, Law Division, for the vacation, modification or
19 correction of the arbitrator's determination. The arbitrator's
20 determination shall be confirmed unless it is vacated, modified or
21 corrected by the court. The court shall render its decision after
22 giving due regard to the time limits and procedures set forth in this
23 act and shall set time limits for lodging for record the lien claim if it
24 finds, contrary to the arbitrator's determination, that the lien claim
25 is valid or the 10-day requirement for lodging for record required
26 by paragraph (8) of this subsection has expired.

27 (11) In the event a Notice of Unpaid Balance and Right to File
28 Lien is filed and the owner conveys its interest in real property to
29 another person before a lien claim is filed, then prior to or at the
30 time of conveyance, the owner may make a deposit with the county
31 clerk where the improvement is located, in an amount no less than
32 the amount set forth in the Notice of Unpaid Balance and Right to
33 File Lien. For any deposit made with the county clerk, the county
34 clerk shall discharge the Notice of Unpaid Balance and Right to File
35 Lien or any related lien claim against the real property for which the
36 deposit has been made. After the issuance of the arbitrator's
37 determination set forth in paragraphs (4) and (5) of this subsection,
38 any amount in excess of that determined by the arbitrator to be the
39 amount of a valid lien claim shall be returned forthwith to the
40 owner who has made the deposit. The balance shall remain where
41 deposited unless the lien claim has been otherwise paid, satisfied by
42 the parties, forfeited by the claimant, invalidated pursuant to
43 paragraph (8) of this subsection or discharged under section 33 of
44 **【this act】** P.L.1993, c.318 (C.2A:44A-33). Notice shall be given by
45 the owner in writing to the lien claimant within five days of making
46 the deposit.

1 (12) Solely for those lien claims arising from a residential
2 construction contract, if a Notice of Unpaid Balance and Right to
3 File Lien is determined to be without basis, the amount of the
4 Notice of Unpaid Balance and Right to File Lien is significantly
5 overstated, or the Notice of Unpaid Balance and Right to File Lien
6 is not **filed** lodged for record: (a) in substantially the form, **or**
7 (b) in the manner, or (c) at a time **not** in accordance with **the**
8 **provisions of** this act, then the claimant shall be liable for all
9 damages suffered by the owner or any other party adversely
10 affected by the Notice of Unpaid Balance and Right to File Lien,
11 including all court costs, reasonable attorneys' fees and legal
12 expenses incurred.

13 (13) If the aggregate sum of all lien claims attaching to any real
14 property that is the subject of a residential construction contract
15 exceeds the amount due under a residential purchase agreement,
16 less the amount due under any previously recorded mortgages or
17 liens other than construction liens, then upon entry of judgment of
18 all such lien claims, each lien claim shall be reduced pro rata. Each
19 lien claimant's share then due shall be equal to the monetary amount
20 of the lien claim multiplied by a fraction in which the denominator
21 is the total monetary amount of all valid claims on the owner's
22 interest in real property against which judgment has been entered,
23 and the numerator is the amount of each particular lien claim for
24 which judgment has been entered. The amount due under the
25 residential purchase agreement shall be the net proceeds of the
26 amount paid less previously recorded mortgages and liens other
27 than construction liens and any required recording fees.
28 (cf: P.L.1993, c.318, s.21)
29

30 16. Section 22 of P.L.1993, c.318 (C.2A:44A-22) is amended to
31 read as follows:

32 22. **Nothing in this act shall be deemed to supersede the**
33 **mortgage priority provisions of P.L.1985, c.353 (C. 46:9-8.1).]**

34 a. Every mortgage recorded before the filing of a lien claim or the
35 filing of a Notice of Unpaid Balance and Right to File Lien in
36 accordance with section 20 of P.L.1993, c.318 (C.2A:44A-20), shall
37 have priority as to the land or other interest in real property described
38 and any improvement wholly or partially erected or thereafter to be
39 erected, constructed or completed thereon, over any lien established by
40 virtue of P.L.1993, c.318 (C.2A:44A-1 et al.) to the extent that:

41 (1) the mortgage secures funds that have been advanced or the
42 mortgagee is obligated to advance to or for the benefit of the
43 mortgagor before the filing of the lien claim or Notice of Unpaid
44 Balance and Right to File Lien in accordance with section 20 of
45 P.L.1993, c.318 (C.2A:44A-20); or

46 (2) the mortgage secures funds advanced after the filing of a lien
47 claim or the filing of a Notice of Unpaid Balance and Right to File

1 Lien in accordance with section 20 of P.L.1993, c.318 (C.2A:44A-20),
2 and the funds are applied in accordance with paragraphs (1) through
3 (7) of subsection b. of this section.

4 b. Every mortgage recorded after the filing of a lien claim or the
5 filing of a Notice of Unpaid Balance and Right to File Lien in
6 accordance with section 20 of P.L.1993, c.318 (C.2A:44A-20), shall
7 have priority as to the land or other interest in real property described
8 and any improvement wholly or partially erected or thereafter to be
9 erected, constructed or completed thereon, over any lien [which may
10 be] established by virtue of this act to the extent that the mortgage
11 secures funds which have been applied to:

12 [a.] (1) The payments of amounts due to any claimants who have
13 filed a lien claim or a Notice of Unpaid Balance and Right to File
14 Lien;

15 [b.] (2) The payment to or the securing of payment by, the party
16 against whose interest the lien claim is filed of all or part of the
17 purchase price of the land covered thereby and any subsequent
18 payment made for the improvements to the land, including but not
19 limited to any advance payment of interest to the holder of the
20 mortgage as required by the mortgagee as a condition of the loan;

21 [c.] (3) The payment of any valid lien or encumbrance which is,
22 or can be established as, prior to a lien provided for by this act;

23 [d.] (4) The payment of any tax, assessment or other State or
24 municipal lien or charge due or payable at the time of , or within 60
25 days after, such payment, as required by the mortgagee as a
26 condition of the loan;

27 [e.] (5) The payment of any premium, counsel fee, consultant
28 fee, interest or financing charges, or other cost related to the
29 financing, any of which are required by the lender to be paid by the
30 owner, provided that the total of same shall not be in excess of 10
31 percent of the principal amount of the mortgage securing the loan
32 upon which they are based;

33 [f. Payment] (6) The payment to the owner of that portion of the
34 purchase price of the real property on which the improvements are
35 made or to be made which have previously been paid by the owner,
36 exclusive of any interest or any other carrying costs of such real
37 property, provided, however, that at the time of the payment of such
38 funds to the owner, the budget upon which the loan was made
39 indicated that the amount of the loan is not less than the total of:
40 [(1)] (a) the purchase price of the real property, [(2)] (b) the cost
41 of constructing the improvements, and [(3)] (c) any cost listed in
42 [subsections c., d. and e.] paragraphs (3), (4), and (5) of subsection
43 b. of this section; or

44 [g.] (7) An escrow in an amount not to exceed 150% of the
45 amount necessary to secure payment of charges described in

1 【subsections a., c., d.】 paragraphs (1), (3), (4) and 【e.】 (5) of
2 subsection b. of this section.

3 c. Nothing in P.L.1993, c.318 (C.2A:44A-1 et al.) shall be
4 deemed to supersede the mortgage priority provisions of P.L.1985,
5 c.353 (C.46:9-8.1 et seq.) or diminish the effect of a Notice of
6 Settlement filed pursuant to P.L.1979, c.406 (C.46:16A-1 et seq.).
7 (cf: P.L.1993, c.318, s.22)

8
9 17. Section 23 of P.L.1993, c.318 (C.2A:44A-23) is amended to
10 read as follows:

11 23. a. The amount due a lien claimant shall be paid only after the
12 lien claim has been established by judgment, or, in the case of an
13 execution sale, only to those lien claimants whose lien claims were
14 filed before application was made to the court for distribution of the
15 sale proceeds. All lien claims established by judgment are valid
16 claims that shall be concurrent and shall be paid 【pro rata out of the
17 lien fund and the proceeds of the sale authorized by this act】 as
18 provided in subsection c. of this section.

19 b. The sheriff or other officer conducting an execution sale
20 authorized by section 24 of P.L.1993, c.318 (C.2A:44A-24) shall pay
21 the proceeds to the clerk of the Superior Court and the Superior Court
22 shall provide proper disposition of sale proceeds to the persons entitled
23 thereto under P.L.1993, c.318 (C.2A:44A-1 et al.).

24 c. The Superior Court shall order the distribution of a lien fund,
25 after its calculation in accordance with section 9 of P.L.1993, c.318
26 (C.2A:44A-9), in the following manner:

27 (1) If there are first tier lien claimants, the lien fund shall be
28 allocated in amounts equal to their valid claims. If the total of those
29 claims would exceed the maximum liability of the owner or
30 community association as provided by section 9 of P.L.1993, c.318
31 (C.2A:44A-9), the allocations shall be reduced pro rata so as not to
32 exceed that maximum liability;

33 (2) From the allocation to each first tier lien claimant, amounts
34 shall be allocated equal to the valid claims of second tier lien claimants
35 whose claims derive from contracts with that first tier lien claimant. If
36 the total of the claims is less than the allocation to that first tier lien
37 claimant, the first tier lien claimant shall be paid the balance. If the
38 total of the claims exceeds the allocation to that first tier lien claimant,
39 the second tier claimants' allocations shall be reduced pro rata so as
40 not to exceed that first tier lien claimant allocation;

41 (3) From the allocation to each second tier lien claimant, amounts
42 shall be allocated equal to the valid claims of third tier lien claimants
43 whose claims derive from contracts with that second tier lien claimant.
44 If the total of the claims is less than the allocation to that second tier
45 claimant, the second tier lien claimant shall be paid the balance. If the
46 total of the claims exceeds the allocation to that second tier lien

1 claimant, the allocation to the third tier lien claimants shall be reduced
2 pro rata so as not to exceed that second tier lien claimant allocation;

3 (4) If there are no first tier lien claimants, the lien fund for second
4 tier lien claimants shall be allocated in amounts equal to that second
5 tier's valid claims. If the total of the claims of any group of second
6 tier lien claimants exceeds the lien fund for that group of claimants as
7 provided by section 9 of P.L.1993, c.318 (C.2A:44A-9), the
8 allocations shall be reduced pro rata so as not to exceed that lien fund;
9 and

10 (5) If there are no first or second tier lien claimants, the lien fund
11 for third tier lien claimants shall be allocated in amounts equal to that
12 third tier's valid claims. If the total of the claims of any group of third
13 tier lien claimants exceeds the lien fund for that group of claimants as
14 provided by section 9 of P.L.1993, c.318 (C.2A:44A-9), the
15 allocations shall be reduced pro rata so as not to exceed that lien fund.

16 (cf: P.L.1993, c.318, s.23)

17

18 18. (New section) a. Subject to the requirements of section 14 of
19 P.L.1993, c.318 (C.2A:44A-14), and in the case of lien claims arising
20 from residential construction contracts the additional requirements of
21 sections 20 and 21 of P.L.1993, c.318 (C.2A:44A-20 and 2A:44A-21),
22 a lien claim arising under P.L.1993, c.318 (C.2A:44A-1 et al.) shall be
23 enforced by a suit commenced in the Superior Court within one year of
24 the date of the last provision of work, services, material or equipment,
25 payment for which the lien claim was filed. Venue shall be laid in the
26 county in which the real property affected by the lien claim is located.

27 b. A lien claimant shall join as party defendants the owner or
28 community association, if applicable, in accordance with section 3 of
29 P.L.1993, c.318 (C.2A:44A-3), contractor or subcontractor alleged to
30 have failed to make payments for which the lien claim has been filed
31 and any other person having an interest in the real property that would
32 be adversely affected by the judgment. The court shall order joinder
33 of necessary parties or determine if it is appropriate for the suit to
34 proceed if party defendants are not joined.

35 c. The court shall stay the suit to the extent that the lien claimant's
36 contract or the contract of another party against whose account the lien
37 claim is asserted provides that any disputes pertaining to the validity or
38 amount of a lien claim are subject to arbitration or other dispute
39 resolution mechanism.

40 d. Upon commencement of the suit, the lien claimant shall cause a
41 Notice of Lis Pendens to be filed in the office of the county clerk or
42 register pursuant to N.J.S.2A:15-6 et seq.

43 e. A party to a suit to enforce a lien claim shall be entitled to assert
44 any defense available to any other party in contesting the amount for
45 which a claimant seeks to have the lien reduced to judgment.

46 f. The judgment to be entered in a suit to enforce a lien claim shall
47 (1) establish the amount due to the lien claimant; and (2) direct the

1 public sale by the sheriff or other such officer as the court may direct
2 of the real property and improvement affected by the lien. The
3 proceeds of the sale shall be distributed in accordance with section 23
4 of P.L.1993, c.318 (C.2A:44A-23). If funds are realized at the sale in
5 an amount greater than the lien fund, the surplus funds shall be
6 distributed in accordance with law.

7 g. Nothing in this act shall bar recovery of money damages
8 pursuant to a lien claim arising under P.L.1993, c.318 (C.2A:44A-1 et
9 al.).

10 h. A judgment obtained against a community association that is
11 unpaid may be enforced by assessment against unit owners as they
12 would be assessed for any other common expense, after reasonable
13 notice, and in a manner directed by the court. In ordering assessments,
14 the court shall be guided by the master deed, bylaws or other
15 document governing the association. A judgment shall not be
16 enforced by the sale of any common elements, common areas or
17 common buildings or structures of a real property development.

18 i. Upon resolution of the suit other than by the entry of final
19 judgment in favor of the plaintiff in accordance with subsection f. of
20 this section, a cancellation or discharge of lis pendens should be filed,
21 by the party who filed the enforcement action, in the office of the
22 county clerk or register where the notice of lis pendens is filed.

23
24 19. Section 25 of P.L.1993, c.318 (C.2A:44A-25) is amended to
25 read as follows:

26 25. If judgment in an action to enforce a lien claim under this
27 act is **【against the owner, contractor or subcontractor】** entered in
28 favor of the lien claimant, a writ of execution may issue thereon,
29 **【as in other cases; if against the improvements and land, a special**
30 **writ of execution may issue to make the amount recovered therein**
31 **by sale of the improvements and land.**

32 If both general and special judgments are given, both writs of
33 execution may issue, separately or combined in one writ, and one of
34 such writs may issue after the return of the other for the whole
35 amount recovered or the residue as the case may require **】** in
36 accordance with the judgment.

37 (cf: P.L.1993 , c.318, s.25)

38
39 20. Section 30 of P.L.1993, c.318 (C.2A:44A-30) is amended to
40 read as follows:

41 30. a. When a lien claim has been filed and the claim has been
42 paid, satisfied or settled by the parties or forfeited by the claimant,
43 the claimant or **【his】** claimant's successor in interest or **【his】**
44 attorney shall, within 30 days of payment, satisfaction or settlement,
45 or within 7 days of demand by any interested party, file with the
46 county clerk a certificate, duly acknowledged or proved, directing

1 the county clerk to discharge the lien claim of record, which
2 certificate shall contain:

- 3 (1) The date of filing the lien claim;
4 (2) The book and page number endorsed thereon;
5 (3) The name of the owner of the land, or the community
6 association, if applicable, named in the notice;
7 (4) The location of the property; and
8 (5) The name of the person for whom the work, services,
9 equipment or materials was provided.

10 b. If the claimant shall fail or refuse to file this certificate, as set
11 forth in subsection a. of this section, then **[upon application by]**
12 any party in interest **[, upon notice to the claimant, to be served**
13 upon him in the same manner as provided by section 7 of this act, or
14 upon satisfactory proof that the claimant cannot be served, any]
15 may proceed in a summary manner by filing an order to show cause
16 in accordance with the Rules of Court adopted by the Supreme
17 Court of New Jersey. A judge of the Superior Court may, upon
18 good cause being shown, and absent receipt of written objections
19 and grounds for same, order the lien claim discharged on the return
20 date of the order to show cause. The county clerk shall thereupon
21 attach the certificate or order to the original notice of lien claim on
22 file and shall note on the record thereof "discharged by certificate"
23 or "discharged by court order," as the case may be and any lien
24 foreclosure action shall be dismissed with prejudice.

25 c. Any party in interest may proceed to discharge a lien claim on
26 the ground that it is without factual basis by filing an order to show
27 cause in the same manner as set forth in subsection b. of this
28 section.

29 d. In those circumstances in which the lien claim has been paid
30 in full, the lien claimant has failed to file a lien claim discharge
31 pursuant to this section, and at least 13 months have elapsed since
32 the date of the lien claim, the owner or community association may,
33 in accordance with section 33 of P.L.1993, c.318 (C.2A:44A-33)
34 submit for filing a duly acknowledged discharge certificate
35 substantially in the form provided by subsection a. of this section
36 accompanied by an affidavit setting forth the circumstances of
37 payment as set forth below:

38
39 OWNER (OR COMMUNITY ASSOCIATION) AFFIDAVIT OF
40 PAYMENT TO DISCHARGE LIEN CLAIM
41
42 TO THE CLERK, COUNTY OF
43

44 The undersigned, being duly sworn upon the undersigned's oath,
45 avers as follows:

1 as the owner's/community association's act and deed, for the
2 purposes therein expressed.

3 _____
4 NOTARY PUBLIC

5
6 NOTARIAL FOR CORPORATE OR LIMITED LIABILITY
7 OWNER/COMMUNITY ASSOCIATION:

8
9 STATE OF NEW JERSEY
10 COUNTY OF 9 () ss:

11
12 On this _____ day of _____ 20____, before me, the subscriber,
13 personally appeared (person signing on behalf of owner/community
14 association) who, I am satisfied is the Secretary (or other
15 officer/manager/agent) of the Corporation (partnership or limited
16 liability company) named herein and who by me duly
17 sworn/affirmed, asserted authority to act on behalf of the
18 Corporation (partnership or limited liability company) and who, by
19 virtue of its Bylaws, or Resolution of its Board of Directors (or
20 partnership or operating agreement) executed the within instrument
21 on its behalf, and thereupon acknowledged that the
22 owner/community association signed, sealed and delivered same as
23 owner's/community association's act and deed, for the purposes
24 herein expressed.

25 _____
26 NOTARY PUBLIC

27
28 [c.] e. Any lien claimant who fails to discharge a lien claim of
29 record pursuant to this section shall be liable for all court costs, and
30 reasonable legal expenses, including , but not limited to, attorneys'
31 fees, incurred by the owner, community association, the contractor,
32 or subcontractor, or any combination of owner, community
33 association, contractor and subcontractor, as applicable, to
34 discharge or obtain the discharge of the lien, and in addition thereto,
35 the court [may] shall enter judgment against the claimant for
36 damages to any or all of the parties adversely affected by the failure
37 to discharge the lien.

38 f. Upon discharge of record in all cases, the party who filed the
39 enforcement action shall cause the Notice of Lis Pendens to be
40 cancelled or discharged of record pursuant to N.J.S.2A:15-6 et seq.
41 Any party who filed the enforcement action who fails to cancel or
42 discharge the lis pendens of record pursuant to this section shall be
43 liable for all court costs, and reasonable legal expenses, including but
44 not limited to, attorneys' fees, incurred by the owner, community
45 association, the contractor, or subcontractor, or any other interested
46 party, or any combination thereof, as applicable, to obtain the
47 cancellation or discharge of the lis pendens, and in addition thereto,

1 the court shall enter judgment against the claimant for damages to any
2 or all of the parties adversely affected by the failure to cancel or
3 discharge the lis pendens.

4 (cf: P.L.1993, c.318, s.30)

5
6 21. Section 31 of P.L.1993, c.318 (C.2A:44A-31) is amended to
7 read as follows:

8 31. a. When a lien claim is filed against any improvement and
9 land under this act, the owner, community association in accordance
10 with section 3 of P.L.1993, c.318 (C.2A:44A-3), contractor or
11 subcontractor may execute and file with the proper county clerk a
12 bond in favor of the lien claimant, with a surety company, duly
13 authorized to transact business in this State, as surety thereon **[, in an]**
14 amount equal to 110% of the amount claimed by the lien claimant
15 **[and a].** The amount of the bond shall be equal to 110% of the amount
16 claimed by the lien claimant **[and a]** but in the case of a lien claim
17 arising from a residential construction contract, no greater than the
18 earned amount of the contract between the owner and the contractor as
19 determined by the arbitrator in accordance with paragraph (4) of
20 subsection b. of section 21 of P.L.1993, c.318 (C.2A:44A-21). The
21 bond shall be filed in accordance with the language set forth in
22 subsection d. of this section, along with payment in the amount of
23 \$25, conditioned upon the payment of any judgment and costs that
24 may be recovered by the lien claimant under this claim. Any form of
25 bond proffered that contains language inconsistent with the language
26 set forth in subsection d. of this section shall be the basis for a cause of
27 action to strike such language from the form of bond.

28 b. As an alternative, the owner, community association,
29 contractor or subcontractor may deposit with the clerk of the
30 Superior Court of New Jersey, funds constituting an amount equal
31 to 110% of the amount claimed by the lien claimant **[and a]** along
32 with payment in the amount of \$25, conditioned upon the payment
33 of any judgment and costs that may be recovered by the lien
34 claimant under this claim. The deposit may be made without the
35 necessity of commencing any legal action. The written receipt
36 provided by the court clerk for the deposit made may be filed with
37 the county clerk as evidence of that deposit.

38 c. Any surety bond filed with the county clerk under this section
39 shall be discharged, and any deposit with the clerk of the Superior
40 Court shall be returned to the depositor, without court order, upon
41 presentment by the owner, community association, contractor or
42 subcontractor of any of the following:

43 **[(a)]** (1) a duly acknowledged certificate as provided in
44 **[paragraph]** paragraphs (2) or (3) of subsection a. of section 33 of
45 **[this act]** P.L.1993, c.318 (C.2A:44A-33);

1 association from the reasonable costs, expenses and damages which
2 may be incurred by virtue of the continuance of the lien claim
3 encumbrance.

4 d. Upon discharge of record of the lien claim, unless the action for
5 enforcement also involves claims, by way of counterclaim, cross claim
6 or interpleader, arising out of or related to the improvements that are
7 the subject of the lien claim in which the owner or community
8 association is an interested party, the court shall also order that the
9 owner or community association no longer be a party to an action to
10 enforce the lien claim, and the surety issuing the bond shall be added
11 as a necessary party.

12 e. Discharge of record of a lien claim will automatically discharge
13 of record the Notice of Unpaid Balance and Right to File Lien filed in
14 connection therewith.

15 (cf: P.L.1993, c.318, s.33)

16

17 23. Section 35 of P.L.1993, c.318 (C.2A:44A-35) is amended to
18 read as follows:

19 35. A discharge, subordination or release of a lien claim or
20 Notice of Unpaid Balance and Right to File Lien shall be duly
21 acknowledged or proved, and recorded in a properly indexed book
22 for that purpose. A notation of the record of the discharge of a lien
23 claim or Notice of Unpaid Balance and Right to File Lien shall be
24 endorsed upon the margin of the record in the book where the
25 original lien or Notice of Unpaid Balance and Right to File Lien is
26 recorded stating that the discharge is filed **[and recorded]**, giving
27 the date of filing **[and recording]** and setting forth the book and the
28 page number where the discharge, or receipt of payment of the lien
29 or order or owner's or community association's discharge
30 certificate discharging the lien, is recorded.

31 (cf: P.L.1993, c.318, s.35)

32

33 24. Section 37 of P.L.1993, c.318 (C.2A:44A-37) is amended to
34 read as follows:

35 37. a. If required in a contract or upon written request from an
36 owner or community association to a contractor, a subcontractor, or
37 both, the contractor or subcontractor shall, within 10 days, provide
38 the owner or community association with an accurate and full list of
39 the names and addresses of each subcontractor and supplier who
40 may have a right to file a lien pursuant to **[the provisions of]** this
41 act.

42 b. If required in a contract or upon written request from a
43 contractor to a subcontractor, the subcontractor shall, within 10
44 days, provide the contractor with an accurate and full list of the
45 names and addresses of each subcontractor or supplier who may
46 have a right to file a lien pursuant to **[the provisions of]** this act.

1 c. Any list provided pursuant to [the provisions of] subsection
2 a. or b. of this section shall be verified under oath by the person
3 providing same.

4 d. Reliance upon the verified list [by the person requesting
5 same or by the owner] shall be prima facie evidence establishing
6 the bona fides of payment made in reliance thereon and shall
7 constitute an absolute defense to any claim that the party making
8 such payment should have made additional inquiry to determine the
9 identity of potential claimants.

10 e. Any person to whom a written request has been made
11 pursuant to [the provisions of] subsection a. or b. of this section
12 who does not provide a list in compliance with this section shall be
13 [directly] liable in damages to: (1) the party requesting the list; or
14 [to] (2) the owner or community association, including, but not
15 limited to, court costs and the reasonable legal expenses, including
16 attorneys' fees, incurred by [said party or the owner, or both] any
17 or all of them, in defending or causing the discharge of a lien claim
18 asserted by a party whose name [has been] is omitted from the list.
19 (cf: P.L.1993, c.318, s.37)
20

21 25. The following sections are repealed:
22 Section 16 of P.L.1993, c.318 (C.2A:44A-16);
23 Section 19 of P.L.1993, c.318 (C.2A:44A-19);
24 Section 24 of P.L.1993, c.318 (C.24:44A-24);
25 Section 26 of P.L.1993, c.318 (C.2A:44A-26);
26 Section 28 of P.L.1993, c.318 (C.2A:44A-28); and
27 Section 29 of P.L.1993, c.318 (C.2A:44A-29).
28

29 26. This act shall take effect immediately.
30
31

32 STATEMENT

33
34 This bill revises the "Construction Lien Law," P.L.1993, c.318
35 (2A:44A-1 et al.), which provides a statutory scheme for private
36 contractors, subcontractors and suppliers to secure payment for
37 their labor and materials, while not impeding the free transfer of
38 real property, through a lien filing process. The bill embodies the
39 text of the New Jersey Law Revision Commission's Final Report on
40 the Construction Lien Law.

41 This bill revises the "Construction Lien Law," which was
42 enacted in 1993, by:

43 (1) clarifying and adding certain defined terms, to conform to
44 actual construction industry usage;

45 (2) clarifying procedures for the filing and amending of the lien
46 claim and for the calculation, distribution and enforcement of the
47 lien fund;

- 1 (3) providing more specific provisions for discharging a satisfied
 - 2 lien claim;
 - 3 (4) further defining the arbitrator's role;
 - 4 (5) modifying time limits for filing and perfecting residential
 - 5 construction contract lien claims;
 - 6 (6) specifying the application of lien claims to community
 - 7 association property; and
 - 8 (7) addressing certain ambiguities as to mortgage priorities with
 - 9 respect to lien claims.
- 10 The sponsor's intent is to enhance application of the 1993 act
- 11 and make clearer the procedures to be followed in order to process
- 12 and perfect a construction lien claim.