

[First Reprint]

**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)**

**Co-Sponsored by:**

**Assemblyman Chivukula, Senators Bateman, Van Drew and S.Kean**

**SYNOPSIS**

Revises the "Construction Lien Law."

**CURRENT VERSION OF TEXT**

As reported by the Assembly Financial Institutions and Insurance Committee on June 10, 2010, with amendments.



**(Sponsorship Updated As Of: 11/23/2010)**

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

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AFI committee amendments adopted June 10, 2010.

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

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

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

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

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

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

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

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

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

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

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

12 “Lien claim” means a claim, by a claimant, for money for the value  
13 of work, services, material or equipment furnished in accordance with  
14 a contract and based upon the contract price and any amendments  
15 thereto, that has been secured by a lien pursuant to this act. <sup>1</sup>The term  
16 “value” includes retainage earned against work, services, materials or  
17 equipment furnished.<sup>1</sup>

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

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

30 “Mortgage” means a loan which is secured by a lien on real  
31 property.

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

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

42 “Public entity” includes the State, and any county, municipality,  
43 district, public authority, public agency, and any other political  
44 subdivision or public body in the State.

45 “Real property development” means all forms of residential and  
46 non-residential real property development including, but not limited to,  
47 a condominium subject to the “Condominium Act,” P.L.1969, c.257

1 (C.46:8B-1 et seq.), a housing cooperative subject to “The Cooperative  
2 Recording Act of New Jersey,” P.L.1987, c.381 (C.46:8D-1 et al.), a  
3 fee simple townhouse development, a horizontal property regime as  
4 defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and a planned  
5 unit development as defined in section 3.3 of P.L.1975, c.291  
6 (C.40:55D-6).

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

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

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

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

1 unit designed for rental purposes or a unit designed to be transferred or  
2 sold for non-residential use.

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

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

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

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

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

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

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

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

40

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

43 3. a. Any contractor, subcontractor or supplier who provides  
44 work, services, material or equipment pursuant to a contract, shall  
45 be entitled to a lien for the value of the work or services performed,  
46 or materials or equipment furnished in accordance with the contract  
47 and based upon the contract price, subject to **[the provisions of]**

1 sections [9 and 10 of this act] 6, 9, and 10 of P.L.1993, c.318  
2 (C.2A:44A-6, 2A:44A-9 and 2A:44A-10). The lien shall attach to  
3 the interest of the owner [in] or unit owner of the real property  
4 development, or be filed against the community association, in  
5 accordance with this section.

6 b. For purposes of this section,

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

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

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

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

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

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

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

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

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

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

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

1       (3) is a party to the lease or sublease that created the leasehold  
2 interest of the tenant and the lease or sublease provides that the  
3 person's interest is subject to a lien for the improvement.

4       f. 'An amount of a lien on an interest of a person other than a  
5 tenant shall be limited to the amount that person agreed in writing  
6 to pay, less payments made by or on behalf of that person in good  
7 faith prior to the filing of the lien.

8       g. 'If an interest in real property is lawfully conveyed after work,  
9 services, material, or equipment are performed or furnished but  
10 before a lien attaches, the lien shall attach only to the interest  
11 retained by the owner or unit owner or community association, as  
12 the case may be, who contracted for the work, services, material or  
13 equipment and not to the interest previously conveyed.

14       '[g.] h. ' Nothing in this act shall be construed to limit the right  
15 of any claimant from pursuing any other remedy provided by law.  
16 (cf: P.L.1993, c.318, s.3)

17

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

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

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

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

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

40       (b) the claimant's identity and contractual relationship with the  
41 owner or community association and other known parties in the  
42 construction chain.

43       (2) In all cases except those involving a residential construction  
44 contract, the lien claim form shall then be lodged for record within 90  
45 days following the date the last work, services, material or equipment  
46 was provided for which payment is claimed. In the case of a  
47 residential construction contract, the lien claim form shall be lodged



1 for record, as required by paragraph (8) of subsection b. of section 21  
2 of P.L.1993, c.318 (C.2A:44A-21), not later than 10 days after receipt  
3 by the claimant of the arbitrator's determination, and within 120 days  
4 following the date the last work, services, material or equipment was  
5 provided for which payment is claimed. If requested, at the time of  
6 lodging for record, the clerk shall provide a copy of the lien claim  
7 form marked with a date and time received.

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

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

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

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

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

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

28

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

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

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

45 (2) ordinary mail addressed to the last known business or residence  
46 address **[or place of residence]** of the owner **[and, if any, of the]** or  
47 community association, contractor **[and the]** or subcontractor**[,**

1 against whom the claim is asserted. Proof of timely mailing shall  
2 satisfy the requirement of service of the lien claim]. A lien claim  
3 served upon a community association need not be served upon  
4 individual “unit owners” as defined in section 3 of P.L.1993, c.318  
5 (C.2A:44A-3).

6 b. The service of the lien claim provided for in this section shall  
7 be a condition precedent to enforcement of the lien; however, the  
8 service of the lien claim outside the prescribed time period shall not  
9 preclude enforceability unless the party not timely served proves by a  
10 preponderance of the evidence that the late service has materially  
11 prejudiced its position. Disbursement of funds by the owner,  
12 community association, a contractor or a subcontractor who has not  
13 been properly served, or the creation or conveyance of an interest in  
14 real property by ~~the~~ an owner who has not been properly served,  
15 [without actual knowledge of the filing of the lien claim,] shall  
16 constitute prima facie evidence [that the party has been materially  
17 prejudiced] of material prejudice.

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

19

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

22 8. The lien claim shall be filed in substantially the following  
23 form:

24

25 CONSTRUCTION LIEN CLAIM

26

27 **[TO THE CLERK, COUNTY OF \_\_\_\_\_ :**

28

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

32

33 1. (Name of claimant) of (address of claimant) has on (date)  
34 claimed a construction lien against the below stated real property of  
35 (owner against whose property the lien is claimed), in the amount of  
36 (\$ \_\_\_\_\_), for the value of the work, services, material or equipment  
37 provided in accordance with a contract with (name of contracting  
38 party with whom claimant has a contract) for the following work,  
39 services, materials or equipment:

40 a.

41 b.

42 c.(etc.)

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

47 Total contract amount: \_\_\_\_\_ \$

1 Amendments to contract: \$  
 2 Total contract amount and amendments to contract:  
 3 \$  
 4 Less: Agreed upon credits: \$  
 5 Contract amount paid to date: \$  
 6 Amendments to contract amount paid to  
 7 date: \$  
 8 TOTAL REDUCTIONS FROM CONTRACT AMOUNT  
 9 AND AMENDMENTS TO  
 10 CONTRACT: \$

11 TOTAL LIEN CLAIM AMOUNT: \$  
 12 Notice of Unpaid Balance and Right to File Lien (if any)  
 13 was previously filed with the County Clerk of County on  
 14 19 as No. in Book Page .

15 3. This construction lien is claimed against the interest  
 16 of (name) as (check one):  
 17 Owner  
 18 Lessee  
 19 Other (describe):

20 in that certain tract or parcel of land and premises described as  
 21 Block , Lot , on the tax map of the of , County of ,  
 22 State of New Jersey, for the improvement of which property the  
 23 aforementioned work, services, materials or equipment was  
 24 provided.

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

31 5. The date of the provision of the last work, services, material  
 32 or equipment for which payment is claimed is (date).  
 33

34 NOTICE TO OWNER OF REAL PROPERTY

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

40 The claimant filing this lien claim shall forfeit all rights to  
 41 enforce the lien and shall be required to discharge the lien of record,  
 42 if the claimant fails to bring an action in the Superior Court, in the  
 43 county in which the real property is situated, to establish the lien  
 44 claim:

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

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

5       You will be given proper notice of the proceeding and an  
6 opportunity to challenge this claim and set forth your position. If,  
7 after you (and/or your contractor or subcontractor) have had the  
8 opportunity to challenge this lien claim, the court of law enters a  
9 judgment against you and in favor of the claimant filing this lien  
10 claim, and thereafter you fail to pay that judgment, your real estate  
11 may then be sold to satisfy the judgment.

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

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

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

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

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

28

29                   NOTICE TO SUBCONTRACTOR OR CONTRACTOR:

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

34

35   Signed

36

37   For

38 Individual, Firm or Corporation

39   Date:

40

41                   CLAIMANT'S REPRESENTATION AND VERIFICATION

42       Claimant represents and verifies that:

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



1 b. \_\_\_\_\_

2 c. \_\_\_\_\_ etc.

3 3. The date of the provision of the last work, services, material or  
4 equipment for which payment is claimed is \_\_\_\_\_, 20\_\_.

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

9 A. Initial Contract Price: \$ \_\_\_\_\_

10 B. Executed Amendments to Contract Price/Change Orders:  
11 \$ \_\_\_\_\_

12 C. Total Contract Price (A + B) = \$ \_\_\_\_\_

13 D. If Contract Not Completed, Value Determined in Accordance  
14 with the Contract of Work Completed or Services, Material,  
15 Equipment Provided : \_\_\_\_\_

16 E. Total from C or D (whichever is applicable): \$ \_\_\_\_\_

17 F. Agreed upon Credits: \$ \_\_\_\_\_

18 G. Amount Paid to Date: \$ \_\_\_\_\_

19 TOTAL LIEN CLAIM AMOUNT E - [F + G] =  
20 \$ \_\_\_\_\_

21  
22 NOTICE OF UNPAID BALANCE AND ARBITRATION

23 AWARD

24  
25 This claim (check one) does \_\_\_\_\_ does not \_\_\_\_\_ arise from a  
26 Residential Construction Contract. If it does, complete 5 and 6 below;  
27 if not residential, complete 5 below, only if applicable. If not  
28 residential and 5 is not applicable, skip to Claimant's Representation  
29 and Verification.

30 5. A Notice of Unpaid Balance and Right to File Lien (if any) was  
31 previously filed with the County Clerk of \_\_\_\_\_ County  
32 on \_\_\_\_\_, 20\_\_ as No. \_\_\_\_\_, in Book \_\_\_\_\_ and Page  
33 \_\_\_\_\_.

34 6. An award of the arbitrator (if residential) was issued on \_\_\_\_\_  
35 in the amount of \$ \_\_\_\_\_.

36  
37 CLAIMANT'S REPRESENTATION AND VERIFICATION

38 Claimant represents and verifies under oath that:

39 1. I have authority to file this claim.

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

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

46 4. This claim form has been lodged for record with the County  
47 Clerk where the property is located within 90 or, if residential

1 construction, 120 days from the last date upon which the work,  
2 services, material or equipment for which payment is claimed was  
3 provided.

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

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

10 7. The foregoing statements made by me in this claim form are  
11 true, to the best of my knowledge. I am aware that if any of the  
12 foregoing statements made by me in this claim form are willfully false,  
13 this construction lien claim will be void and that I will be liable for  
14 damages to the owner or any other person injured as a consequence of  
15 the filing of this lien claim.

16 Name of Claimant

17 \_\_\_\_\_  
18 Signed

19 \_\_\_\_\_  
20 (Type or Print Name and Title)

21 SUGGESTED NOTARIAL FOR INDIVIDUAL CLAIMANT:

22  
23 STATE OF NEW JERSEY

24 COUNTY OF [ ] ss:

25  
26 On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, the subscriber,  
27 personally appeared [person signing on behalf of claimant(s)] who, I am  
28 satisfied, is/are the person(s) named in and who executed the within  
29 instrument, and thereupon acknowledged that claimant(s) signed,  
30 sealed and delivered the same as claimant's (s') act and deed, for  
31 the purposes therein expressed.

32 \_\_\_\_\_  
33 NOTARY PUBLIC

34  
35 SUGGESTED NOTARIAL FOR CORPORATE OR LIMITED  
36 LIABILITY CLAIMANT:

37  
38 STATE OF NEW JERSEY

39 COUNTY OF [ ] ss:

40  
41 On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, the subscriber,  
42 personally appeared [person signing on behalf of claimant(s)] who, I am  
43 satisfied is the Secretary [or other officer/manager/agent] of the  
44 Corporation [partnership or limited liability company] named herein and  
45 who by me duly sworn/affirmed, asserted authority to act on behalf  
46 of the Corporation [partnership or limited liability company] and who, by  
47 virtue of its Bylaws, or Resolution of its Board of Directors [or

1 partnership or operating agreement] executed the within instrument on  
2 its behalf, and thereupon acknowledged that claimant signed, sealed  
3 and delivered same as claimant's act and deed, for the purposes  
4 herein expressed.

5

6

7 NOTARY PUBLIC

8

9

10 NOTICE TO OWNER OF REAL PROPERTY  
11 NOTICE TO CONTRACTOR OR SUBCONTRACTOR, IF  
12 APPLICABLE

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

18 The claimant filing this lien claim shall forfeit all rights to enforce  
19 the lien claim and shall be required to discharge the lien claim of  
20 record, if the claimant fails to bring an action in the Superior Court, in  
21 the county in which the real property is situated, to establish the lien  
22 claim:

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

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

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

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

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

46 2. causing the lien claim to be discharged by filing a surety bond or  
47 making a deposit of funds as provided for in section 31 of P.L.1993,



1 c.318 (C.2A:44A-31), by which the owner will retain the right to  
2 challenge this lien claim in a legal proceeding before a court of law.  
3 (cf: P.L.1993, c.318, s.8)

4  
5 6. Section 9 of P.L.1993, c.318 (C.2A:44A-9) is amended to  
6 read as follows:

7 9. a. The amount of a lien claim shall **[be limited to]** not exceed  
8 the unpaid portion of the contract price [, or any unpaid portion  
9 thereof, whichever is less,] of the claimant's contract for the work,  
10 services, material or equipment provided.

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

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

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

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

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

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

31 (3) liquidated damages;

32 (4) collusive payments;

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

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

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

45 e. For purposes of a lien fund calculation, the “earned amount of  
46 the contract” is the contract price unless the party obligated to perform  
47 has not completed the performance in which case the “earned amount

1 of the contract” is the value, as determined in accordance with the  
2 contract, of the work performed and services, material or equipment  
3 provided.

4 f. If more than one lien claimant will participate in a lien fund,  
5 the lien fund shall be established as of the date of the first of the  
6 participating lien claims lodged for record unless the earned amount of  
7 the contract increases, in which case the lien fund shall be calculated  
8 from the date of the increase.

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

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

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

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

34 a. In the case of a lien claim filed by a contractor, the total amount  
35 of the contract price of the contract between the owner and the  
36 contractor less the amount of payments duly made, if any, prior to  
37 receipt of a copy of the lien claim pursuant to section 7 of this act, by  
38 the owner to the contractor or any other claimant who has filed a lien  
39 claim or a Notice of Unpaid Balance and Right to File Lien pursuant  
40 either to a contract with the contractor and any subcontractor or  
41 supplier, or a contract between a subcontractor of the contractor and  
42 any supplier or other subcontractor; or

43 b. In the case of lien claim filed by a subcontractor or supplier, the  
44 amount provided in subsection a. of this section, or the contract price  
45 of the contract between the contractor or subcontractor and the  
46 subcontractor or supplier, as applicable, pursuant to which the work,

1 services, materials or equipment is provided by the subcontractor or  
2 supplier, less the amount of payments duly made, if any, prior to  
3 receipt of a copy of the lien claim pursuant to section 7 of this act, to  
4 the contractor or supplier or any other claimant who has filed a lien  
5 claim or a Notice of Unpaid Balance and Right to File Lien pursuant to  
6 a contract with such subcontractor or supplier, whichever is less.】

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

8

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

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

15 (1) additional work performed or services, material, or equipment  
16 provided;

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

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

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

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

35 c. The amended lien claim shall be filed in substantially the  
36 following form:

37

38 AMENDMENT TO CONSTRUCTION LIEN CLAIM

39

40 TO THE CLERK, COUNTY OF :  
41

42 1. On (date), the undersigned claimant, (*name of claimant*) of  
43 (*address of claimant*), filed a CONSTRUCTION LIEN CLAIM in the  
44 amount of (\$ ) DOLLARS for the value of the work, services,  
45 material or equipment provided in accordance with the contract  
46 between claimant and (*name*) as of (*date*).



1           **【CLAIMANT'S REPRESENTATION AND VERIFICATION**

2                                 **(Same as for lien claim)】**

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

4  
5           9. Section 12 of P.L.1993, c.318 (C.2A:44A-12) is amended to  
6 read as follows:

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

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

24  
25           10. Section 13 of P.L.1993, c.318 (C.2A:44A-13) is amended to  
26 read as follows:

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

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

37           (1) upon each Notice of Unpaid Balance and Right to File Lien  
38 **【whenever an Amended Notice of Unpaid Balance and Right to File**  
39 **Lien or a discharge relative】** , the date an amendment to that Notice  
40 or discharge thereof, and related lien claim or amendment thereto is  
41 filed;

42           (2) upon each lien claim **【whenever】** , the date an **【amended**  
43 **lien claim relative】** amendment thereto is filed; **【upon each Notice**  
44 **of Unpaid Balance and Right to File Lien whenever a lien claim or**  
45 **amended lien claim relative thereto is filed; upon each lien claim or**  
46 **amended lien claim whenever a discharge, subordination or release**

1 of a lien claim relative thereto is filed. In addition, the clerk shall  
2 cause a notation of the date of commencement of an action to  
3 enforce a lien claim to made] and the date a discharge,  
4 subordination or release thereof is filed; and

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

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

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

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

24 Each Notice of Unpaid Balance and Right to File Lien or Amended	
25 Notice of Unpaid Balance and Right to File Lien.....	\$ 4.50
26 Each lien claim or amended lien claim.....	\$ 4.50
27 Each discharge, subordination or release of lien claim or release of	
28 Notice of Unpaid Balance and Right to File .....	\$ 2.00
29 Each marginal notation .....	\$ 1.00]

30 as set forth in N.J.S.22A:2-29.  
31 (cf: P.L.1993, c.318, s.13)

32  
33 11. Section 14 of P.L.1993, c.318 (C.2A:44A-14) is amended to  
34 read as follows:

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

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

44 (2) Within 30 days following receipt of written notice, by  
45 personal service or certified mail, return receipt requested, from the  
46 owner , community association, contractor, or subcontractor against

1 whose account a lien claim is filed, requiring the claimant to  
2 commence an action to **【establish】** enforce the lien claim.

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

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

20 d. Any disputes arising out of the improvement which is the  
21 subject of a lien claim but which are unrelated to any action to  
22 enforce a lien claim may be brought in a separate action or in a  
23 separate count in the same action.

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

25

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

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

43 b. If a defense to a lien claim is without basis, the party  
44 maintaining the defense shall be liable for all court costs, and  
45 reasonable legal expenses, including , but not limited to, attorneys'  
46 fees, incurred by any of the parties adversely affected by the

1 defense to the lien claim. The court shall, in addition, enter  
2 judgment against the party maintaining **the frivolous** this defense  
3 for damages to any of the parties adversely affected **by said**  
4 **defense** thereby.

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

11 d. For the purpose of this section “without basis” means  
12 frivolous, false, unsupported by a contract, or made with malice or  
13 bad faith or for any improper purpose.  
14 (cf: P.L.1993, c.318, s.15)

15

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

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

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

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

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

44 d. If a lien claimant receives payment of **its** the proportionate  
45 share but refuses to discharge its lien claim, then upon application  
46 to a court having jurisdiction thereof, the court shall order the  
47 discharge of the lien claim to the extent of that proportionate share.



1 The lien claimant shall be further subject to [the provisions of]  
2 section 30 of [this act] P.L.1993, c.318 (C.2A:44A-30), and any  
3 amounts to be paid shall be paid from the amount due the claimant.  
4 (cf: P.L.1993, c.318, s.18)

5  
6 14. Section 20 of P.L.1993, c.318 (C.2A:44A-20) is amended to  
7 read as follows:

8 20. a. All valid liens filed pursuant to this act shall attach to the  
9 interest of the owner from the time of filing of the lien claim [in the  
10 office of the county clerk], subject to [the provisions of section 10  
11 of this act] this section and sections 3, 6, and 10 of P.L.1993, c.318  
12 (C.2A:44A-3, 2A:44A-6 and 2A:44A-10).

13 [a. In the event of the creation, conveyance, lease or mortgage  
14 of an estate or interest in real property to which improvements have  
15 been made that are subject to the lien provisions of this act, a]

16 b. A lien claim validly filed under this act shall have priority  
17 over [any] a prior [creation,] conveyance, lease or mortgage of an  
18 [estate or] interest in real property to which improvements have  
19 been made, only if [the claimant has filed with the county clerk  
20 prior to that creation, conveyance, lease or mortgage,] a Notice of  
21 Unpaid Balance and Right to File Lien is filed before the recording  
22 or lodging for record of a recordable document evidencing that  
23 conveyance, lease or mortgage. The Notice of Unpaid Balance and  
24 Right to File Lien shall be filed in substantially the following form:

25  
26 [TO THE CLERK, COUNTY OF :  
27

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

31 1. (Name of claimant) of (address of claimant) has on (date) a  
32 potential construction lien against the below described property of  
33 (owner against whose property the lien will be claimed), in the  
34 amount of (\$ ), for the value of the work, services, material or  
35 equipment provided in accordance with a contract with (name of  
36 contracting party with whom claimant has a contract) for the  
37 following work, services, materials or equipment:

- 38 a.  
39 b.  
40 c. (etc.)

41 2. The amount due for work, services, materials or equipment  
42 provided by claimant in connection with the improvement of the  
43 real property, and upon which this lien claim is based is as follows:  
44

45 Total contract amount: \$

1 Amendments to contract: \$  
2 Total contract amount and amendments to contract: \$  
3  
4 Less: Agreed upon credits: \$  
5 Contract amount paid to date: \$  
6  
7 Amendments to contract amount paid to date: \$  
8  
9 TOTAL REDUCTIONS FROM CONTRACT AMOUNT AND  
10 AMENDMENTS TO CONTRACT: \$  
11  
12 TOTAL LIEN CLAIM AMOUNT: \$

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

17 Owner

19 Lessee

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

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

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

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

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

46 CLAIMANT'S REPRESENTATION AND VERIFICATION

1 Claimant represents and verifies that:

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

5 2. The work, services, material or equipment for which this  
6 Notice of Unpaid Balance and Right to File Lien is filed was  
7 provided exclusively in connection with the improvement of the  
8 real property which is the subject of this Notice of Unpaid Balance  
9 and Right to File Lien.

10 3. The Notice of Unpaid Balance and Right to File Lien has  
11 been filed within 90 days from the last date upon which the work,  
12 services, materials or equipment for which payment is claimed was  
13 provided.

14 4. The foregoing statements made by me are true, to the best of  
15 my knowledge.

16 Name of Claimant

17 Signed

18 Type or Print Name and Title

19 Date:  
20

21 b. In the event that the claimant elects to file a Notice of  
22 Unpaid Balance and Right to File Lien as described above, it shall  
23 not be necessary to serve a copy of said Notice of Unpaid Balance  
24 and Right to File Lien upon any interested party.

25 c. After the filing of a Notice of Unpaid Balance and Right to  
26 File Lien, any person claiming title to or an estate or interest in or a  
27 lien upon the real property described in the Notice of Unpaid  
28 Balance and Right to File Lien, shall be deemed to have acquired  
29 said title, estate, interest or lien with knowledge of the anticipated  
30 filing of a lien claim, and shall be subject to the terms, conditions  
31 and provisions of that lien claim within the period provided by  
32 section 6 of this act and as set forth in the Notice of Unpaid Balance  
33 and Right to File Lien. A Notice of Unpaid Balance and Right to  
34 File Lien filed under the provisions of this act shall be subject to the  
35 effect of a notice of settlement filed pursuant to P.L.1979, c.406  
36 (C.46:16A-1 et seq.).

37 d. The Notice of Unpaid Balance and Right to File Lien shall  
38 be effective for 90 days from the date of the provision of the last  
39 work, services, materials or equipment delivery for which payment  
40 is claimed as set forth in paragraph 5 of the Notice of Unpaid  
41 Balance and Right to File Lien.

42 e. The filing of a Notice of Unpaid Balance and Right to File  
43 Lien shall not constitute the filing of a lien claim in accordance  
44 with the provisions of this act, nor does it extend the time for the  
45 filing of a lien claim in accordance with the provisions of this act.

46 f. Failure to file a Notice of Unpaid Balance and Right to File  
47 Lien shall not affect the claimant's lien rights arising under the

1 provisions of this act, to the extent that no creation, conveyance,  
2 lease or mortgage of an interest in real property has taken place  
3 prior to the filing of a Notice of Unpaid Balance and Right to File  
4 Lien or lien claim.

5 g. A Notice of Unpaid Balance and Right to File Lien may be  
6 amended by the filing of an Amended Notice of Unpaid Balance  
7 and Right to File Lien in accordance with the provisions of this  
8 section.】

9  
10 TO THE CLERK, COUNTY OF \_\_\_\_\_:

11  
12 NOTICE OF UNPAID BALANCE AND RIGHT TO FILE  
13 LIEN

14  
15 In accordance with the "Construction Lien Law," P.L.1993,  
16 c.318 (C.2A:44A-1 et al.), notice is hereby given that:

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

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

43 3. In accordance with the above contract, this claimant  
44 performed the following work or provided the following services,  
45 material or equipment:

- 46 a. \_\_\_\_\_
- 47 b. \_\_\_\_\_
- 48 c. \_\_\_\_\_ etc.

- 1     4. The date of the provision of the last work, services, material  
2 or equipment for which payment is claimed is (date.)
- 3     5. The amount due for work, services, material or equipment  
4 provided by claimant in connection with the improvement of the  
5 real property, and upon which this lien claim is based is calculated  
6 as follows:
- 7
- 8 A. Initial Contract Price: \$ \_\_\_\_\_
- 9 B. Executed Amendments to Contract Price/Change Orders:  
10 \$ \_\_\_\_\_
- 11 C. Total Contract Price (A + B) = \$ \_\_\_\_\_
- 12 D. If Contract Not Completed, Value Determined in Accordance  
13 with Contract of Work Completed or Services, Material or  
14 Equipment Provided : \_\_\_\_\_
- 15 E. Total from C or D (whichever is applicable): \$ \_\_\_\_\_
- 16 F. Agreed upon Credits: \$ \_\_\_\_\_
- 17 G. Amount Paid to Date: \$ \_\_\_\_\_
- 18 TOTAL LIEN CLAIM AMOUNT E - [F + G] = \$ \_\_\_\_\_

19

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

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

33

34 CLAIMANT'S REPRESENTATION AND VERIFICATION

35

36 Claimant represents and verifies that:

- 37
- 38     1. I have authority to file this Notice of Unpaid Balance and  
39 Right to File Lien.
- 40     2. The claimant is entitled to the amount claimed herein at the  
41 date this Notice is lodged for record, pursuant to claimant's contract  
42 described in the Notice of Unpaid Balance and Right to File Lien.
- 43     3. The work, services, material or equipment for which this  
44 Notice of Unpaid Balance and Right to File Lien is filed was  
45 provided exclusively in connection with the improvement of the  
46 real property which is the subject of this Notice of Unpaid Balance  
47 and Right to File Lien.



1 herein expressed.

2

3 NOTARY PUBLIC

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

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

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

26 **[e.]** f. The lodging for record or filing of a Notice of Unpaid  
27 Balance and Right to File Lien shall not constitute the lodging for  
28 record or filing of a lien claim **[in accordance with the provisions of**  
29 **this act,]** nor does it extend the time for the **[filing]** lodging for record  
30 of a lien claim, in accordance with **[the provisions of]** this act.

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

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

41

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

44 21. a. The Legislature finds that the ability to sell and purchase  
45 residential housing is essential for the preservation and

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

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

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

46 (2) Upon **【the filing of】** its lodging for record, a Notice of  
47 Unpaid Balance and Right to File Lien, **【service of the Notice of**



1 Unpaid Balance and Right to File Lien] shall be [effected] served  
2 in accordance with the provisions [of] for the service of lien claims  
3 in section 7 of [this act] P.L.1993, c.318 (C.2A:44A-7).

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

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

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

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

1 counterclaims to any lien claim which may be filed; and **[d]** ~~(e)~~ the  
2 allocation of costs of the arbitration among the parties. When making  
3 the above determination, the arbitrator shall also consider all  
4 determinations made by that arbitrator in any earlier arbitration  
5 proceeding pertaining to the same residential construction.

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

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

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

45 (8) Upon determination by the arbitrator that there is an amount  
46 which, pursuant to a valid lien shall attach to the improvement, the  
47 lien claimant shall, within 10 days of the lien claimant's receipt of

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

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

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

28 (11) In the event a Notice of Unpaid Balance and Right to File  
29 Lien is filed and the owner conveys its interest in real property to  
30 another person before a lien claim is filed, then prior to or at the  
31 time of conveyance, the owner may make a deposit with the county  
32 clerk where the improvement is located, in an amount no less than  
33 the amount set forth in the Notice of Unpaid Balance and Right to  
34 File Lien. For any deposit made with the county clerk, the county  
35 clerk shall discharge the Notice of Unpaid Balance and Right to File  
36 Lien or any related lien claim against the real property for which the  
37 deposit has been made. After the issuance of the arbitrator's  
38 determination set forth in paragraphs (4) and (5) of this subsection,  
39 any amount in excess of that determined by the arbitrator to be the  
40 amount of a valid lien claim shall be returned forthwith to the  
41 owner who has made the deposit. The balance shall remain where  
42 deposited unless the lien claim has been otherwise paid, satisfied by  
43 the parties, forfeited by the claimant, invalidated pursuant to  
44 paragraph (8) of this subsection or discharged under section 33 of  
45 **[this act]** P.L.1993, c.318 (C.2A:44A-33). Notice shall be given by  
46 the owner in writing to the lien claimant within five days of making  
47 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 R.S.46:9-8  
5 or diminish the effect of a Notice of Settlement filed pursuant to  
6 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

1     The undersigned, being duly sworn upon the undersigned’s oath,  
2     avers as follows:

3     1. I am an owner of real property located at (address of property  
4     subject to lien), in that certain tract or parcel of land and premises  
5     described as Block \_\_\_\_\_, Lot \_\_\_\_\_, on the tax map of the  
6     (municipality) of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey  
7     (In the case of a community association, I am an  
8     [officer/manager/agent] of the community association, [name of  
9     community association] for property located at [location of property  
10    development].)

11    2. On or about (date), I caused to be sent to (name of contractor  
12    or subcontractor to whom payment was made), located at (address  
13    designated for payment by the filed lien claim form), the final  
14    payment in the amount of (\$ \_\_\_\_\_) in full satisfaction of a certain  
15    lien claim dated (date) which was filed by (name of lien claimant)  
16    against the real property designated in paragraph 1, on (date) in the  
17    office of the county clerk of the County of (name of county) in  
18    Construction Lien Book \_\_\_\_\_, Page \_\_\_\_\_.

19    3. At least 13 months have elapsed since the date of the lien  
20    claim and 90 days before filing this affidavit, I mailed or caused to  
21    be mailed by certified mail to the last known address of the lien  
22    claimant as set forth in the filed lien claim form written notice of  
23    my intention to file a discharge certificate with respect to the lien  
24    claim. To the best of my knowledge and belief, no written  
25    communication denying or disputing payment in full of the lien  
26    claim has been received from the lien claimant (name).

27    4. Wherefore, the undersigned directs the county clerk of the  
28    County of (name of county) to cause to be filed the discharge  
29    certificate accompanying this affidavit, and further directs the  
30    county clerk to cause a notation of the discharge of the lien to be  
31    endorsed upon the margin of the record of the original lien claim,  
32    stating that the discharge is filed, and setting forth the date, book  
33    and page number of the filed discharge.

34  
35                                    Name of Owner/Community Association  
36                                    Signed \_\_\_\_\_  
37                                    (Type or Print Name and Title)  
38

39    NOTARIAL FOR INDIVIDUAL OWNER

40  
41    STATE OF NEW JERSEY

42    COUNTY OF [ \_\_\_\_\_ ] ss:

43  
44    On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, before me, the subscriber,  
45    personally appeared (name of owner/community association) who, I am  
46    satisfied, is/are the person(s) named in and who executed the within  
47    instrument, and thereupon acknowledged that the owner/community

1 association signed, sealed and delivered the same as the  
2 owner's/community association's act and deed, for the purposes  
3 therein expressed.

4 \_\_\_\_\_

5 NOTARY PUBLIC

6

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

9

10 STATE OF NEW JERSEY

11 COUNTY OF 9 ( ) ss:

12

13 On this day of 20, before me, the subscriber,  
14 personally appeared (person signing on behalf of owner/community  
15 association) who, I am satisfied is the Secretary (or other  
16 officer/manager/agent) of the Corporation (partnership or limited  
17 liability company) named herein and who by me duly  
18 sworn/affirmed, asserted authority to act on behalf of the  
19 Corporation (partnership or limited liability company) and who, by virtue  
20 of its Bylaws, or Resolution of its Board of Directors (or partnership  
21 or operating agreement) executed the within instrument on its behalf,  
22 and thereupon acknowledged that the owner/community association  
23 signed, sealed and delivered same as owner's/community  
24 association's act and deed, for the purposes 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] <sup>1</sup>, but  
32 in the case of a lien claim arising from a residential construction  
33 contract, no greater than the earned amount of the contract between  
34 the owner and the contractor as determined by the arbitrator in  
35 accordance with paragraph (4) of subsection b. of section 21 of  
36 P.L.1993, c.318 (C.2A:44A-21). The deposit shall be made<sup>1</sup> along  
37 with payment in the amount of \$25, conditioned upon the payment  
38 of any judgment and costs that may be recovered by the lien  
39 claimant under this claim. The deposit may be made without the  
40 necessity of commencing any legal action. The written receipt  
41 provided by the court clerk for the deposit made may be filed with  
42 the county clerk as evidence of that deposit.

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

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

4       **[(b)]** (2) an order of discharge as provided in paragraph '[(3)]'  
 5 (4) of subsection a. of section 33 of [this act] P.L.1993, c.318  
 6 (C.2A:44A-33);

7       **[(c)]** (3) a judgment of dismissal or other final judgment against  
 8 the lien claimant; or

9       **[(d)]** (4) a true copy of a Stipulation of Dismissal, with  
 10 prejudice, executed by the lien claimant or its representative in any  
 11 action to foreclose the lien claim which is subject to the surety bond  
 12 or deposit.

13       d. The bond shall be filed in substantially the following form:

14  
 15   (Name of Bond Company)  
 16                 (Bond No. \_\_\_\_\_ ) Bond Amount \$ \_\_\_\_\_

17  
 18                 **BOND DISCHARGING CONSTRUCTION LIEN**

19       WHEREAS, on the (date), (name of claimant) (hereinafter "Lienor")  
 20 filed a Construction Lien for the sum of (amount written out)  
 21 (\$ \_\_\_\_\_), in the office of the Clerk of the County of (name of  
 22 county where lien claim was filed), (hereinafter "Clerk"), against the real  
 23 property of owner, (name of owner), or community association (or  
 24 name of community association) and the tenancy interest of Lot (#),  
 25 Block (#), (address of property or name and location of the property  
 26 development in the case of a community association) on the Tax Map of  
 27 Township of (name of municipality), County of (name of county), State of  
 28 New Jersey as more fully set forth in the notice of lien, a true copy  
 29 of which is attached hereto, and which lien was filed (date lien claim  
 30 was filed) in book (#), page (#).

31  
 32       WHEREAS, in accordance with the "Construction Lien Law,"  
 33 P.L.1993, c.318 (C.2A:44A-1 et al.), the Principal is permitted to  
 34 file a bond for 110% of the lien amount, which would be a total  
 35 bond penalty of (amount written out) (\$ \_\_\_\_\_) (hereinafter "Penal  
 36 Sum").

37  
 38       NOW THEREFORE, in consideration of the discharge of said lien  
 39 by the Clerk, the Principal and (name of bond company) as surety,  
 40 having an office at (address of bond company) and authorized to do  
 41 business as a surety, do hereby pursuant to the statute provided, in  
 42 such case made and jointly and severally undertake and become  
 43 bound to the Clerk in an amount not exceeding the Penal Sum, (\$ \_\_\_\_\_)  
 44 conditioned for the payment of any and all judgments that may be  
 45 rendered against said property in favor of the Lienor, its successors  
 46 or assigns, in any action or proceedings to enforce the alleged lien  
 47 as described.

1        Sealed with our seal and dated the    day of (month), (year)

2  
3

4	<u>Witness:</u> _____	<i>(Name of principal)</i>
5		<u>By:</u> <i>(Signature)</i>
6		<u>Title:</u> <i>(Printed name and title)</i>
7	<u>Witness:</u> _____	<i>(Name of Bond Company)</i>
8		<u>By:</u> <i>(Signature)</i>
9		<u>Title:</u> <i>(Printed name and</i>
10		<i>title of signatory)</i>

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

12

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

15        33. a. A lien claim **[may]** shall be discharged of record by the  
16 county clerk:

17        (1) Upon the execution and filing with the county clerk of a  
18 surety bond, or the deposit of funds with the clerk of the Superior  
19 Court of New Jersey, in favor of the claimant in an amount equal to  
20 110% of the amount of the lien claim; or

21        (2) Upon receipt of a duly acknowledged certificate, discharging  
22 the lien claim from the claimant having filed the lien claim, or **[his]**  
23 claimant's successor in interest, or **[his]** attorney; or

24        (3) Pursuant to the filing of an owner’s or community association’s  
25 discharge certificate in accordance with section 30 of P.L.1993, c.318  
26 (C.2A:44A-30), provided that 90 days prior to the filing of the  
27 affidavit, substantially in the form set forth in section 30 of P.L.1993,  
28 c.318 (C.2A:44A-30), the lien claimant is notified by certified mail at  
29 the lien claimant’s last known address of the owner’s or community  
30 association’s intent to file a discharge certificate and no written  
31 communication from the lien claimant denying or disputing payment  
32 in full of the lien claim is filed with the county clerk and served on the  
33 owner or community association; or

34        **[(3)]** (4) Pursuant to an order of discharge by the court.

35        b. When judgment of dismissal or final other judgment against  
36 the lien claimant is entered in an action to enforce the lien claim  
37 under this act and no appeal is taken within the time allowed for an  
38 appeal, or if an appeal is taken within the time allowed for an  
39 appeal, or if an appeal is taken and finally determined against the  
40 lien claimant, the court before which the judgment was rendered,  
41 upon application and written notice to the lien claimant as the court  
42 shall direct, shall order the county clerk to enter a discharge of the  
43 lien claim.

44        c. If an appeal is taken by the claimant, the claim shall be  
45 discharged unless the claimant posts a bond, in an amount to be  
46 determined by the court, to protect the owner or community  
47 association from the reasonable costs, expenses and damages which

1 may be incurred by virtue of the continuance of the lien claim  
2 encumbrance.

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

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

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

15

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

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

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

31

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

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

41 b. If required in a contract or upon written request from a  
42 contractor to a subcontractor, the subcontractor shall, within 10  
43 days, provide the contractor with an accurate and full list of the  
44 names and addresses of each subcontractor or supplier who may  
45 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.