

ASSEMBLY, No. 130

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen JONES and LUSTBADER

1 AN ACT concerning construction lien filings supplementing and  
2 amending 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 read  
8 as follows:

9 2. As used in this act:

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

13 "Contract" means any agreement, or amendment thereto, in writing,  
14 evidencing the respective responsibilities of the contracting parties,  
15 which, in the case of a supplier, shall include a delivery or order slip  
16 signed by the owner, contractor, or subcontractor having a direct  
17 contractual relation with a contractor, or an authorized agent of any  
18 of them.

19 "Contract price" means the amount specified in a contract for the  
20 provision of work, services, material or equipment.

21 "Contractor" means any person in direct privity of contract with the  
22 owner of real property for improvements thereto. A construction  
23 manager who enters into a single contract with an owner for the  
24 performance of all construction work within the scope of a  
25 construction manager's contract, a construction manager who enters  
26 into a subcontract, or a construction manager who is designated as an  
27 owner's agent without entering into a subcontract is also a  
28 "contractor" for the purposes of this act. A licensed architect,  
29 engineer or land surveyor who is not a salaried employee of the  
30 contractor or the owner, performing professional services related to  
31 the improvement of property in direct contract with the property  
32 owner shall be considered a "contractor" for the purposes of this act.

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

**Matter underlined thus is new matter.**

1 "County [clerk] recording officer" means the clerk or the register  
2 of deeds in counties having a register of deeds, of the county in which  
3 real property to be improved is situated.

4 "Equipment" means any machinery or other apparatus, including  
5 rental equipment delivered to the site to be improved or used on the  
6 site to be improved, for incorporation in the improved real property or  
7 for use in the construction of the improvement of the real property but  
8 not incorporated therein. A lien for equipment shall arise only for  
9 equipment used on site for the improvement of real property, including  
10 equipment installed in the improved real property. In the case of rental  
11 equipment, the amount of any lien shall be limited to the rental rates  
12 as set forth in the rental contract.

13 "Filing" means the [lodging for record] filing and indexing of the  
14 documents authorized to be filed [or recorded] and indexed pursuant  
15 to this act in the office of the county [clerk] recording officer, or, in  
16 the case of real property located in more than one county, in the office  
17 of the county [clerk] recording officer of each such county.

18 "Improvement" means any actual or proposed physical changes to  
19 real property by the provision of work or services by a contractor or  
20 subcontractor, pursuant to the terms of a contract, whether or not  
21 such physical change is undertaken, and includes the construction,  
22 reconstruction, alteration, repair, demolition or removal of any  
23 building or structure, any addition to a building or structure, or any  
24 construction or fixture necessary or appurtenant to a building or  
25 structure for use in conjunction therewith. "Improvement" includes  
26 excavation, digging, drilling, drainage, dredging, filling, irrigation, land  
27 clearance, grading or landscaping. "Improvement" shall not include  
28 the mining of minerals or removal of timber, gravel, soil, or sod which  
29 is not integral to or necessitated by the improvement to real property.  
30 "Improvement" shall not include public works or improvements to real  
31 property contracted for and awarded by a public entity. Any work or  
32 services requiring a license for performance including, but not limited  
33 to, architectural, engineering, plumbing or electrical construction, shall  
34 not constitute an improvement unless performed by a licensed  
35 claimant.

36 "Interest in real property" means any ownership, possessory  
37 security or other enforceable interest, including, but not limited to, fee  
38 title, easement rights, covenants or restrictions, leases and mortgages.

39 "Lien" or "construction lien" means a lien on the owner's interest in  
40 the real property arising pursuant to the provisions of this act.

41 "Material" means any goods delivered to, or used on the site to be  
42 improved, for incorporation in the improved real property, or for  
43 consumption as normal waste in construction operations; or for use on  
44 site in the construction or operation of equipment used in the  
45 improvement of the real property but not incorporated therein. The  
46 term "material" does not include fuel provided for use in motor

1 vehicles or equipment delivered to or used on the site to be improved.

2 "Mortgage" means a loan which is secured by a lien on real  
3 property.

4 "Owner" or "owner of real property" means any person, including  
5 a tenant, with an estate or interest in real property who personally or  
6 through an authorized agent enters into a contract for improvement of  
7 the real property.

8 "Public entity" includes the State, and any county, municipality,  
9 district, public authority, public agency, and any other political  
10 subdivision or public body in the State.

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

21 "Residential purchase agreement" means a written contract between  
22 a buyer and a seller for the purchase of a one- or two-family dwelling,  
23 any residential unit in a condominium subject to the provisions of  
24 P.L.1969, c.257 (C.46:8B-1 et seq.), any residential unit in a housing  
25 cooperative, any residential unit contained in a fee simple townhouse  
26 development, any residential unit contained in a horizontal property  
27 regime as defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and  
28 any residential unit contained in a planned unit development as defined  
29 in section 3.3 of P.L.1975, c.291 (C.40:55D-6).

30 "Services" means professional services performed by a licensed  
31 architect, engineer or land surveyor who is not a salaried employee of  
32 the contractor, a subcontractor or the owner and who is in direct  
33 privity of contract with the owner for the preparation of plans,  
34 documents, studies, or the provision of other services by a licensed  
35 architect, engineer or land surveyor prepared in connection with a  
36 proposed or an actual physical change to real property, whether or not  
37 such physical change is undertaken.

38 "State" means the State of New Jersey and any office, department,  
39 division, bureau, board, commission or agency of the State.

40 "Subcontractor" means any person providing work or services in  
41 connection with the improvement of real property pursuant to a  
42 contract with a contractor or pursuant to a contract with a  
43 subcontractor in direct privity of contract with a contractor.

44 "Supplier" means any supplier of material or equipment, including  
45 rental equipment, having a direct privity of contract with an owner,  
46 contractor or subcontractor in direct privity of contract with a

1 contractor. The term "supplier" shall not include a person who  
2 supplies fuel for use in motor vehicles or equipment delivered to or  
3 used on the site to be improved or a seller of personal property who  
4 has a security agreement providing a right to perfect either a security  
5 interest pursuant to Title 12A of the New Jersey Statutes or a lien  
6 against the motor vehicle pursuant to applicable law.

7 "Work" means any activity, including labor, performed in  
8 connection with the improvement of real property. The term "work"  
9 includes architectural, engineering or surveying services provided by  
10 salaried employees of a contractor or subcontractor, as part of the  
11 work of the contractor or subcontractor, provided, however, that the  
12 right to file a lien claim for those services shall be limited to the  
13 contractor or subcontractor.

14 (cf: P.L.1993, c.318, s.2)

15

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

18 5. No liens shall attach nor shall a lien claim be filed:

19 a. For materials that have been furnished or delivered subject to a  
20 security agreement which has been entered into pursuant to Chapter  
21 9 of Title 12A of the New Jersey Statutes (N.J.S.12A:9-101 et seq.);

22 b. For public works or improvements to real property contracted  
23 for and awarded by a public entity; provided, however, that nothing  
24 herein shall affect any right or remedy established pursuant to the  
25 "municipal mechanic's lien law," N.J.S.2A:44-125 et seq.;

26 c. For work, services, material or equipment furnished pursuant to  
27 a residential construction contract unless there is [strict] compliance  
28 with sections 20 and 21 of this act.

29 (cf: P.L.1993, c.318, s.5)

30

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

33 6. A lien claim shall be signed, acknowledged and verified by oath  
34 of the claimant or, in the case of a partnership or corporation, a  
35 partner or duly authorized officer thereof, and filed with the county  
36 [clerk] recording officer not later than 90 days following the date the  
37 last work, services, material or equipment was provided for which  
38 payment is claimed. No lien shall attach, or be enforceable under the  
39 provisions of this act and, in the case of a residential construction  
40 contract, compliance with sections 20 and 21 of this act, unless the  
41 lien claim is filed in the form, manner and within the time provided by  
42 this section and section 8 of this act, and a copy thereof served on the  
43 owner and, if any, the contractor and the subcontractor, against whom  
44 the claim is asserted, pursuant to section 7 of this act.

45 For purposes of this act, warranty or other service calls, or other  
46 work, materials or equipment provided after completion or termination

1 of a claimant's contract shall not be used to determine the last day that  
2 work, services, material or equipment was provided.  
3 (cf: P.L.1993, c.318, s.6)

4  
5 4. Section 8 of P.L.1993, c.318 (C.2A:44A-8) is amended to read  
6 as follows:

7 8. The lien claim shall be filed in substantially the following form:  
8 CONSTRUCTION LIEN CLAIM  
9 TO THE [CLERK] RECORDING OFFICER, COUNTY OF \_\_\_\_\_:

10  
11 In accordance with the terms and provisions of the "Construction  
12 Lien Law," P.L.1993, c.318 (C.2A:44A-1 et al.), notice is hereby  
13 given that:

14 1. (Name of claimant) of (address of claimant) has on (date)  
15 claimed a construction lien against the below stated real property of  
16 (owner against whose property the lien is claimed), in the amount of  
17 (\$ ), for the value of the work, services, material or equipment  
18 provided in accordance with a contract with (name of contracting  
19 party with whom claimant has a contract) for the following work,  
20 services, materials or equipment:

- 21 a.
- 22 b.
- 23 c. (etc.)

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

28	Total contract amount:	\$_____
29	Amendments to contract:	\$_____
30	Total contract amount and	
31	amendments to contract:	\$_____
32	Less: Agreed upon credits:	\$_____
33	Contract amount paid to date:	\$_____
34	Amendments to contract amount	
35	paid to date:	\$_____
36	TOTAL REDUCTIONS FROM	
37	CONTRACT AMOUNT AND	
38	AMENDMENTS TO CONTRACT:	\$_____
39	TOTAL LIEN CLAIM AMOUNT:	\$_____

40  
41 A Notice of Unpaid Balance and Right to File Lien (if any) was  
42 previously filed with the county [clerk] recording officer of \_\_\_\_\_  
43 County on \_\_\_[19] (date) as No. [in Book \_\_ Page \_].

44 3. This construction lien is claimed against the interest of \_\_\_\_\_

1 \_\_\_\_\_ (name) as (check one):

2 \_\_\_\_\_ Owner

3 \_\_\_\_\_ Lessee

4 \_\_\_\_\_ Other (describe): \_\_\_\_\_

5 in that certain tract or parcel of land and premises described as Block  
6 \_\_, Lot \_\_, on the tax map of the of \_\_\_\_, County of \_\_\_\_\_, State of  
7 New Jersey, more commonly known as \_\_\_\_\_ (street address),  
8 for the improvement of which property the aforementioned work,  
9 services, materials or equipment was provided.

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

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

18 NOTICE TO OWNER OF REAL PROPERTY

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

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

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

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

35 You will be given proper notice of the proceeding and an  
36 opportunity to challenge this claim and set forth your position. If, after  
37 you (and/or your contractor or subcontractor) have had the  
38 opportunity to challenge this lien claim, the court of law enters a  
39 judgment against you and in favor of the claimant filing this lien claim,  
40 and thereafter you fail to pay that judgment, your real estate may then  
41 be sold to satisfy the judgment.

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

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

46 2. You (or your contractor or subcontractor) can cause the lien

1 claim to be discharged by filing a surety bond or making a deposit of  
2 funds as provided for in section 31 of P.L.1993, c.318 (C.2A:44A-31).

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

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

11 NOTICE TO SUBCONTRACTOR OR CONTRACTOR:

12 This lien has been filed with the county [clerk] recording officer and  
13 served upon the owner of the real estate. This lien places the owner  
14 on notice that the real estate may be sold to satisfy this claim unless  
15 the owner pays the claimed sum to this claimant.

16 Signed \_\_\_\_\_

17 For \_\_\_\_\_

18 Individual, Firm or Corporation

19 Date:

20 CLAIMANT'S REPRESENTATION AND [VERIFICATION]  
21 CERTIFICATION

22  
23 Claimant represents and [verifies] certifies that:

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

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

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

33 4. [The] I certify that the foregoing statements made by me are  
34 true, to the best of my knowledge. I am aware that if any of the  
35 foregoing statements made by me are false, this construction lien claim  
36 will be void and that I will be liable for damages to the owner or any  
37 other person injured as a consequence of the filing of this lien claim.  
38 I further acknowledge that if the statements contained herein are  
39 willfully false, I am subject to punishment.

40 Name of Claimant \_\_\_\_\_

41 Signed \_\_\_\_\_

42 Type or Print Name and Title

43 Date:

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

45  
46 5. Section 11 of P.L.1993, c.318 (C.2A:44A-11) is amended to

1 read as follows:

2 11. A lien claim may be amended by the filing of an amendment  
3 with the county [clerk] recording officer. The amended lien claim  
4 shall comply with all the conditions and requirements for the filing of  
5 a lien claim, including the notice requirements of section 7 of this act,  
6 as well as the conditions and requirements of this section and subject  
7 to the limitations of section 10 of this act. That portion of the  
8 amended lien claim in excess of the amount previously claimed shall  
9 attach as of the date of filing of the amended lien claim.

10 The amended lien claim shall be filed in substantially the following  
11 form:

12 AMENDMENT TO CONSTRUCTION LIEN CLAIM  
13 TO THE [CLERK] RECORDING OFFICER, COUNTY OF \_\_\_\_\_:

14 On (date), the undersigned claimant, (name of claimant) of (address  
15 of claimant), filed a CONSTRUCTION LIEN CLAIM in the amount  
16 of \_\_\_\_\_ (\$\_\_\_) DOLLARS for the value of the work, services,  
17 material or equipment provided in accordance with the contract  
18 between claimant and (name) as of (date).

19 This construction lien claim was claimed against the interest of \_\_  
20 \_\_\_\_\_(name) as (check one):

21  Owner

22  Lessee

23  Other (describe): \_\_\_\_\_

24 in that certain tract or parcel of land and premises described as Block  
25 \_\_, Lot \_\_, on the tax map of the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_,  
26 State of New Jersey, more commonly known as \_\_\_\_\_ (street  
27 address), for the improvement of which property the aforementioned  
28 work, services, materials or equipment was provided.

29 This amends a lien claim which was previously filed with the county  
30 [clerk] recording officer of \_\_\_\_\_ County on \_\_\_\_[, 19] (date) as  
31 No. \_\_ [in Book No. , Page ]. A Notice of Unpaid Balance and Right  
32 to File Lien (if any) was previously filed with the county [clerk]  
33 recording officer of \_\_\_\_\_ on \_\_\_\_[, 19] (date) as No. \_\_ [in Book  
34 No. , Page ].

35 Amendments to the original claim were recorded in the office of the  
36 county [clerk] recording officer on \_\_\_\_[, 19] (date) (as No. \_\_ [in  
37 Book No. , Page ]. (Complete if applicable)

38 Effective the date of the filing of this AMENDMENT TO  
39 CONSTRUCTION LIEN CLAIM, the value of the lien is claimed to  
40 be in the total amount of \_\_\_\_\_ (\$\_\_\_) DOLLARS, inclusive of all  
41 prior lien claims or amendments thereof.

42 The work, services, material or equipment provided upon which this  
43 Amendment is made are:

1 a.

2 b.

3 c. (etc.)

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

6 NOTICE TO OWNER OF REAL PROPERTY

7 (Same as for lien claim)

8

9 NOTICE TO SUBCONTRACTOR OR CONTRACTOR

10 (Same as for lien claim)

11

12 CLAIMANT'S REPRESENTATION AND [VERIFICATION]

13 CERTIFICATION

14 (Same as for lien claim)

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

16

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

19 13. a. Each county [clerk] recording officer shall provide [a book  
20 designated as the "Construction Lien Book"]an index in which each  
21 [clerk] recording officer shall enter each Notice of Unpaid Balance and  
22 Right to File Lien and Amended Notice of Unpaid Balance and Right  
23 to File Lien, and each lien claim and amended lien claim, and each  
24 discharge, subordination or release of a lien claim or Notice of Unpaid  
25 Balance and Right to File Lien and each continuation of a perfected  
26 lien claim presented for filing pursuant to the provisions of this act.

27 b. [The county clerk shall cause marginal notations to be made  
28 upon each document filed pursuant to this act, as follows: upon each  
29 Notice of Unpaid Balance and Right to File Lien whenever an  
30 Amended Notice of Unpaid Balance and Right to File Lien or a  
31 discharge relative thereto is filed; upon each lien claim whenever an  
32 amended lien claim relative thereto is filed; upon each Notice of  
33 Unpaid Balance and Right to File Lien whenever a lien claim or  
34 amended lien claim relative thereto is filed; upon each lien claim or  
35 amended lien claim whenever a discharge, subordination or release of  
36 a lien claim relative thereto is filed. In addition, the clerk shall cause  
37 a notation of the date of commencement of an action to enforce a lien  
38 claim to be made upon the lien claim or amended lien claim relative  
39 thereto. The failure of the clerk to cause a marginal notation to be  
40 made shall not affect the validity or enforceability of any document  
41 filed pursuant to this act.](Deleted by amendment P.L. , c. ).

42 c. The county [clerk] recording officer shall provide and maintain  
43 on a daily basis an index [book designated as the "Construction Lien  
44 Index Book,"]setting forth therein in alphabetical order, arranged by  
45 the names of the owners, and by the names of the claimants, each  
46 Notice of Unpaid Balance and Right to File Lien, Amended Notice of

1 Unpaid Balance and Right to File Lien, lien claim, amended lien claim,  
 2 discharge, subordination and release of a lien claim or Notice of  
 3 Unpaid Balance and Right to File Lien.

4 d. Each county [clerk] recording officer shall charge the following  
 5 fees for [the] filing and [marginal notation of the] indexing documents  
 6 authorized to be filed and indexed by this act:

7 Each Notice of Unpaid Balance  
 8 and Right to File Lien or Amended  
 9 Notice of Unpaid Balance and Right  
 10 to File Lien [\$4.50] \$15.

11 Each lien claim or amended lien claim. [\$4.50] \$15.

12 Each discharge, subordination or  
 13 release of lien claim or release of  
 14 Notice of Unpaid Balance and Right  
 15 to File Lien [\$2.00] \$15

16 [Each marginal notation \$1.00]

17  
 18 Any other filing \$15.

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

20

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

23 14. a. A claimant filing a lien claim shall forfeit all rights to  
 24 enforce the lien, and shall immediately discharge the lien of record, if  
 25 the claimant fails to bring an action in the Superior Court, in the  
 26 county in which the real property is situated, to establish the lien  
 27 claim:

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

31 (2) Within 30 days following receipt of written notice, by personal  
 32 service or certified mail, return receipt requested, from the owner  
 33 requiring the claimant to commence an action to establish the lien  
 34 claim.

35 b. Any lien claimant who forfeits a lien pursuant to subsection a.  
 36 of this section and fails to discharge that lien of record in accordance  
 37 with section 30 of this act, shall be liable for all court costs, and  
 38 reasonable legal expenses, including attorneys' fees, incurred by the  
 39 owner, the contractor, or subcontractor, or any combination, in  
 40 defending or causing the discharge of the lien claim. The court may,  
 41 in addition, enter judgment against the claimant for damages to any of  
 42 the parties adversely affected by the lien claim.

43 c. Whenever any claimant shall commence an action in the Superior  
 44 Court of New Jersey to enforce a lien claim as provided by this act, the  
 45 claimant shall cause a Notice of Lis Pendens to be filed in the office of  
 46 the county [clerk or register] recording officer pursuant to the

1 provisions of N.J.S.2A:15-6 et seq.

2 d. Any disputes arising out of the improvement which is the subject  
3 of a lien claim but which are unrelated to any action to enforce a lien  
4 claim may be brought in a separate action.

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

6

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

9 18. This section shall solely apply to work, services, material or  
10 equipment furnished under a residential construction contract.

11 a. If a lien attaches to an interest in real property, the lien claimant  
12 shall release a proportionate share of the interest in real property from  
13 the lien upon receipt of payment for that proportionate share by the  
14 following partial release:

15

16 \_\_\_\_\_

Prepared By:

17

18

\_\_\_\_\_

19

20

21

This release is made on \_\_\_\_\_ (date)

22

23 BY the Lien Claimant,

24

25

26

27

(referred to as "I" or "me")

28

29 To the Owner,

30

31

32

33

34

35

\_\_\_\_\_

(referred to as "You")

36

37 If more than one person signs this release, the word "I" shall mean  
38 "We."

39

40 Release. I hold a lien claim on property owned by you. I agree  
41 to change the lien claim by removing some of the property covered by  
42 the lien claim. This property is released or freed from the lien claim.  
43 The rest of the property (not released) remains subject to the lien  
44 claim. I have been paid \$ \_\_\_\_\_ for making this Release.

1 Lien Claim.            The lien claim I hold is dated \_\_\_\_\_ and was  
 2 made by \_\_\_\_\_ to \_\_\_\_\_. The lien claim was filed  
 3 on \_\_\_\_\_ (date) in the office of the County Recording Officer of  
 4 \_\_\_\_\_ County, New Jersey, and is indexed as number \_\_\_\_\_. The  
 5 amount of the original lien claim is \$ \_\_\_\_\_.

6  
7  
8

9 Release of Property. \_\_\_\_\_ The property which is released from and  
 10 no longer subject to the lien claim is located in \_\_\_\_\_ in the  
 11 County of \_\_\_\_\_ and State of New Jersey. The property includes:  
 12 (a) the land; (b) all buildings that are located on the land; (c) all  
 13 fixtures that are attached to the land, building or buildings, as the case  
 14 may be, for example, furnaces, bathroom fixtures and kitchen cabinets;  
 15 and (d) all other rights that I now have relating to the property. The  
 16 legal description of the released property is:

17     All that certain lot, tract or parcel of land and premises hereinafter  
 18 particularly described, situate and being in the \_\_\_\_\_, County  
 19 of \_\_\_\_\_, New Jersey:

20     And being commonly known as \_\_\_\_\_  
 21 (street address).

22

23 Who is Bound.            This release is binding upon me and all  
 24 who succeed to my rights as lien claimant.

25

26 Signatures.            I agree to the Release. If this Release is made by  
 27 a corporation, its proper corporate officers sign and its corporate seal  
 28 is affixed.

29  
30

31 WITNESS OR ATTEST:

32 \_\_\_\_\_  
33  
34

37 STATE OF NEW JERSEY:

38  
39 COUNTY OF \_\_\_\_\_

40

41 I CERTIFY that on \_\_\_\_\_ (date), \_\_\_\_\_ personally came  
 42 before me, and this person acknowledged under oath, to my  
 43 satisfaction, that:

44  
45

46 Signed and sworn before me

1 this      day of      (date).

2 \_\_\_\_\_

3 A Notary Public of the State of New Jersey

4

5     **b.** This proportionate share shall be calculated in the following  
6 manner:

7     **[a.](1)** If there is a contract between the lien claimant and the  
8 owner which provides for an allocation by lot or tract, that allocation  
9 of the proportionate share shall be binding upon the lien claimant.

10     **[b.](2)** If the work performed by the lien claimant was for a  
11 condominium in which a master deed is filed before the lien attaches,  
12 or for work performed for a cooperative in which a master declaration  
13 is filed before the lien attaches, then the proportionate share shall be  
14 allocated in an amount equal to the percentage of common elements  
15 attributable to each unit.

16     **[c.](3)** If subsection a. or b. of this section does not apply, then the  
17 lien shall not be released as to any portion of the interest in real  
18 property unless the lien claimant and the owner otherwise agree in a  
19 writing signed by both parties.

20     **[d.]c.** If a lien claimant receives payment of its proportionate share  
21 but refuses to discharge its lien claim, then upon application to a court  
22 having jurisdiction thereof, the court shall order the discharge of the  
23 lien claim to the extent of that proportionate share. The lien claimant  
24 shall be further subject to the provisions of section 30 of this act , and  
25 any amounts to be paid shall be paid from the amount due the  
26 claimant.

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

28

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

31     20. All valid liens filed pursuant to this act shall attach to the  
32 interest of the owner from the time of filing of the lien claim in the  
33 office of the county **[clerk] recording officer**, subject to the provisions  
34 of section 10 of this act.

35     a. In the event of the creation, conveyance, lease or mortgage of  
36 an estate or interest in real property to which improvements have been  
37 made that are subject to the lien provisions of this act, a lien claim  
38 validly filed under this act shall have priority over any prior creation,  
39 conveyance, lease or mortgage of an estate or interest in real property,  
40 only if the claimant has filed with the county **[clerk] recording officer**  
41 prior to that creation, conveyance, lease or mortgage, a Notice of  
42 Unpaid Balance and Right to File Lien in substantially the following  
43 form:

44     NOTICE OF UNPAID BALANCE AND RIGHT TO FILE LIEN

45     TO THE [CLERK] RECORDING OFFICER, COUNTY OF \_\_\_:

46     In accordance with the terms and provisions of the "Construction

1 Lien Law," P.L.1993, c.318 (C.2A:44A-1 et al.), notice is hereby  
2 given that:

3 1. (Name of claimant) of (address of claimant) has on (date) a  
4 potential construction lien against the below described property of  
5 (owner against whose property the lien will be claimed), in the amount  
6 of (\$ ), for the value of the work, services, material or equipment  
7 provided in accordance with a contract with (name of contracting  
8 party with whom claimant has a contract) for the following work,  
9 services, materials or equipment:

10 a.

11 b.

12 c. (etc.)

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

16 Total contract amount: \$\_\_\_\_\_

17 Amendments to contract: \$\_\_\_\_\_

18 Total contract amount and  
19 amendments to contract: \$\_\_\_\_\_

20 Less: Agreed upon credits: \$\_\_\_\_\_

21 Contract amount paid to date: \$\_\_\_\_\_

22 Amendments to contract  
23 amount paid to date: \$\_\_\_\_\_

24 TOTAL REDUCTIONS FROM  
25 CONTRACT AMOUNT AND  
26 AMENDMENTS TO CONTRACT: \$\_\_\_\_\_

27 TOTAL LIEN CLAIM AMOUNT: \$\_\_\_\_\_

28 3. This construction lien is claimed against the interest of \_\_\_\_\_  
29 \_\_\_\_\_ (name) as (check one):

30  Owner

31  Lessee

32  Other (describe): \_\_\_\_\_ in that certain

33 tract or parcel of land and premises described as Block , Lot , on the  
34 tax map of the of , County of , State of New Jersey, more commonly  
35 known as \_\_\_\_\_ (street address), for the improvement of which  
36 property the aforementioned work, services, materials or equipment  
37 was provided.

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

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

46 6. The written contract (is) (is not) (cross out inapplicable portion)

1 a residential construction contract as defined in section 2 of this act.  
2 7. This notification has been filed prior or subsequent to  
3 completion of the work, services, materials or equipment as described  
4 above. The purpose of this notification is to advise the owner and any  
5 other person who is attempting to encumber or take transfer of said  
6 property described above that a potential construction lien may be filed  
7 within the 90 day period following the date of the provision of the last  
8 work, services, materials or equipment as set forth in paragraph 5.

9 Claimant \_\_\_\_\_

10

11 **CLAIMANT'S REPRESENTATION AND [VERIFICATION]**  
12 **CERTIFICATION**

13 Claimant represents and [verifies] certifies that:

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

17 2. The work, services, material or equipment for which this Notice  
18 of Unpaid Balance and Right to File Lien is filed was provided  
19 exclusively in connection with the improvement of the real property  
20 which is the subject of this Notice of Unpaid Balance and Right to File  
21 Lien.

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

25 4. [The] I certify that the foregoing statements made by me are  
26 true, to the best of my knowledge. I am aware that if any of the  
27 foregoing statements made by me are false, this Notice of Unpaid  
28 Balance and Right to File Lien will be void and that I will be liable for  
29 damages to the owner or any other person injured as a consequence of  
30 the filing of this notice.

31 Name of Claimant \_\_\_\_\_

32 Signed \_\_\_\_\_

33 (Type or Print Name and Title)

34 Date:

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

39 c. After the filing of a Notice of Unpaid Balance and Right to File  
40 Lien, any person claiming title to or an estate or interest in or a lien  
41 upon the real property described in the Notice of Unpaid Balance and  
42 Right to File Lien, shall be deemed to have acquired said title, estate,  
43 interest or lien with knowledge of the anticipated filing of a lien claim,  
44 and shall be subject to the terms, conditions and provisions of that lien  
45 claim within the period provided by section 6 of this act and as set  
46 forth in the Notice of Unpaid Balance and Right to File Lien. A

1 Notice of Unpaid Balance and Right to File Lien filed under the  
2 provisions of this act shall be subject to the effect of a notice of  
3 settlement filed pursuant to P.L.1979, c.406 (C.46:16A-1 et seq.).

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

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

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

19 g. A Notice of Unpaid Balance and Right to File Lien may be  
20 amended by the filing of an Amended Notice of Unpaid Balance and  
21 Right to File Lien in accordance with the provisions of this section and  
22 in substantially the following form:

23 AMENDMENT TO NOTICE OF UNPAID BALANCE AND  
24 RIGHT TO FILE LIEN

25  
26 TO THE RECORDING OFFICER, COUNTY OF \_\_\_\_\_  
27

28 On \_\_\_\_\_ (date), the undersigned, \_\_\_\_\_, of \_\_\_\_\_, filed  
29 a NOTICE OF UNPAID BALANCE AND RIGHT TO FILE LIEN in  
30 the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS for the value of the work,  
31 services, material or equipment provided in accordance with the  
32 contract between claimant and \_\_\_\_\_ as of \_\_\_\_\_.

33 This construction lien is to be claimed against the interest of \_\_\_\_\_  
34 (name) as (check one):

- 35  
36 \_\_\_\_\_ Owner  
37 \_\_\_\_\_ Lessee  
38 \_\_\_\_\_ Other (describe) \_\_\_\_\_

39 in that certain tract or parcel of land and premises described as Block  
40 \_\_\_\_\_, Lot \_\_\_\_\_, on the tax map of the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, State  
41 of New Jersey, commonly known as \_\_\_\_\_ (street address), for  
42 the improvement of which property the aforementioned work, services,  
43 materials or equipment was or were provided.  
44

45 This amends a Notice of Unpaid Balance and Right to File Lien  
46 which was previously filed with the Recording Officer of \_\_\_\_\_

1 County on \_\_\_\_\_ (date) as No. \_\_\_\_\_. (Complete the following, if  
2 applicable) Prior amendments to the Notice of Unpaid Balance and  
3 Right to File Lien were filed with the County Recording Officer on  
4 \_\_\_\_\_ (date) as No. \_\_\_\_\_.

5  
6 Effective the date of filing this AMENDMENT TO NOTICE OF  
7 UNPAID BALANCE AND RIGHT TO FILE LIEN, the value of the  
8 lien to be claimed is the total amount of \_\_\_\_\_ (\$ \_\_\_\_\_)  
9 DOLLARS, inclusive of all prior Notices of Unpaid Balance and Right  
10 to File Lien or amendments thereof.

11  
12 The work, services, material or equipment provided upon which this  
13 Amendment is made is or are:

- 14  
15 a.  
16 b.  
17 c. (etc.)

18  
19 The date of the provision of the last work, services, material or  
20 equipment for which payment is claimed is \_\_\_\_\_.

21  
22 The written contract (is)(is not)(cross out inapplicable portion) a  
23 residential construction contract as defined pursuant to section 2 of  
24 the "Construction Lien Law," P.L.1993, c.318 (C.2A:44A-1 et seq.).

25 This amended notification has been filed prior or subsequent to  
26 completion of the work, services, materials or equipment delivery as  
27 described above. The purpose of this notification is to advise the  
28 owner and any other person who is attempting to encumber or take  
29 transfer of said property described above that a potential construction  
30 lien may be filed within the 90 day period following the date of the  
31 provision of the last work, services, materials or equipment delivery  
32 as set forth above.

33  
34 \_\_\_\_\_ (Name)  
35 \_\_\_\_\_ (Signature)  
36 \_\_\_\_\_ (Name of Claimant)

37 CLAIMANT'S REPRESENTATION AND CERTIFICATION

38  
39 Claimant represents and certifies that:

40  
41 1. The amount claimed herein is due and owing at the date of  
42 filing, pursuant to claimant's contract described in the Notice of  
43 Unpaid Balance and Right to File Lien.

44 2. The work, services, material or equipment for which this  
45 Amendment to Notice of Unpaid Balance and Right to File Lien is  
46 filed was or were provided exclusively in connection with the

1 improvement of the real property which is the subject of this Notice of  
2 Unpaid Balance and Right to File Lien.

3 3. This Amendment to Notice of Unpaid Balance and Right to  
4 File Lien has been filed within 90 days from the last date upon which  
5 the work, services, materials or equipment for which payment is  
6 claimed was or were provided.

7 4. I certify that the foregoing statements made by me are true,  
8 to the best of my knowledge. I am aware that if any of the foregoing  
9 statements made by me are false, the Notice of Unpaid Balance and  
10 Right to File Lien which this amends will be void and that I will be  
11 liable for damages to the owner or any other person injured as a  
12 consequence of the filing of this amended notice.

13  
14 Name of Claimant \_\_\_\_\_

15 Signed \_\_\_\_\_

16  
17 (Type or Print Name and Title of Person Signing Form)

18 Date: \_\_\_\_\_

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

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

23 21. a. The Legislature finds that the ability to sell and purchase  
24 residential housing is essential for the preservation and enhancement  
25 of the economy of the State of New Jersey and that while there exists  
26 a need to provide contractors, subcontractors and suppliers with  
27 statutory benefits to enhance the collection of money for goods,  
28 services and materials provided for the construction of residential  
29 housing in the State of New Jersey, the ability to have a stable  
30 marketplace in which families can acquire homes without undue delay  
31 and uncertainty and the corresponding need of lending institutions in  
32 the State of New Jersey to conduct their business in a stable  
33 environment and to lend money for the purchase or finance of home  
34 construction or renovations requires that certain statutory provisions  
35 as related to the lien benefits accorded to contractors, subcontractors  
36 and suppliers be modified. The Legislature further finds that the  
37 construction of residential housing generally involves numerous  
38 subcontractors and suppliers to complete one unit of housing and that  
39 the multiplicity of lien claims and potential for minor monetary  
40 disputes poses a serious impediment to the ability to transfer title to  
41 residential real estate expeditiously. The Legislature further finds that  
42 the purchase of a home is generally one of the largest expenditures  
43 that a family or person will make and that there are a multitude of  
44 other State and federal statutes and regulations, including "The New  
45 Home Warranty and Builders' Registration Act," P.L.1977, c.467  
46 (C.46:3B-1 et seq.) and "The Planned Real Estate Development Full

1 Disclosure Act," P.L.1977, c.419 (C.45:22A-21 et seq.), which afford  
2 protection to consumers in the purchase and finance of their homes,  
3 thereby necessitating a different treatment of residential real estate as  
4 it relates to the rights of contractors, suppliers and subcontractors to  
5 place liens on residential real estate. The Legislature declares that  
6 separate provisions concerning residential construction will provide a  
7 system for balancing the competing interests of protecting consumers  
8 in the purchase of homes and the contract rights of contractors,  
9 suppliers and subcontractors to obtain payment for goods and services  
10 provided.

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

14 (1) As a condition precedent to the filing of any lien arising under  
15 a residential construction contract, a lien claimant shall first file a  
16 Notice of Unpaid Balance and Right to File Lien in accordance with  
17 the provisions of subsection a. of section 20 of this act, and comply  
18 with all other provisions of this section.

19 (2) Upon the filing of a Notice of Unpaid Balance and Right to File  
20 Lien, service of the Notice of Unpaid Balance and Right to File Lien  
21 shall be effected in accordance with the provisions of section 7 of this  
22 act.

23 (3) Unless the parties have otherwise agreed in writing to an  
24 alternative dispute resolution mechanism, simultaneously with the  
25 service under paragraph (2) of this subsection, the lien claimant shall  
26 also serve a demand for arbitration and fulfill all the requirements and  
27 procedures of the American Arbitration Association to institute an  
28 expedited proceeding before a single arbitrator designated by the  
29 American Arbitration Association.

30 (4) Upon the closing of all hearings in the arbitration, the arbitrator  
31 shall make the following determinations: (a) whether the Notice of  
32 Unpaid Balance and Right to File Lien was in compliance with section  
33 20 of this act and whether service was proper under section 7 of this  
34 act; (b) the validity and amount of any lien claim which may be filed  
35 pursuant to the Notice of Unpaid Balance and Right to File Lien; (c)  
36 the validity and amount of any liquidated or unliquidated setoffs or  
37 counterclaims to any lien claim which may be filed; and (d) the  
38 allocation of costs of the arbitration among the parties.

39 (5) In the event the amount of any setoffs or counterclaims  
40 presented in the arbitration are unliquidated and cannot be determined  
41 by the arbitrator in a liquidated amount, the arbitrator, as a condition  
42 precedent to the filing of the lien claim, shall order the lien claimant to  
43 post a bond, letter of credit or funds with an attorney-at-law of New  
44 Jersey, or other such person or entity as may be ordered by the  
45 arbitrator in such amount as the arbitrator shall determine to be 110%  
46 of the approximate fair and reasonable value of such setoffs or

1 counterclaims, but in no event shall the bond, letter of credit or funds  
2 exceed the amount of the lien claim which may be filed. This 110%  
3 limitation regarding any bond, letter of credit or funds shall also apply  
4 to any alternative dispute resolution mechanism to which the parties  
5 may agree.

6 (6) The arbitrator shall make such determinations set forth in  
7 paragraphs (4) and (5) of this subsection within 30 days of receipt of  
8 the lien claimant's demand for arbitration by the American Arbitration  
9 Association. That time period shall not be extended unless otherwise  
10 agreed to by the parties. If an alternative dispute mechanism is  
11 alternatively agreed to between the parties, such determination shall  
12 be made as promptly as possible making due allowance for all time  
13 limits and procedures set forth in this act.

14 (7) Any contractor, subcontractor or supplier whose interests are  
15 affected by the filing of a Notice of Unpaid Balance and Right to File  
16 Lien under section 10 of this act shall be permitted to join in such  
17 arbitration; but the arbitrator shall not determine the rights or  
18 obligations of any such parties except to the extent those rights or  
19 obligations are affected by the lien claimant's Notice of Unpaid  
20 Balance and Right to File Lien.

21 (8) Upon determination by the arbitrator that there is an amount  
22 which, pursuant to a valid lien shall attach to the improvement, the lien  
23 claimant shall, within 10 days of the lien claimant's receipt of the  
24 determination, file such lien claim in accordance with the provisions of  
25 section 8 of this act and furnish any bond, letter of credit or funds  
26 required by the arbitrator's decision. The failure to file such a lien  
27 claim, or furnish the bond, letter of credit or funds, within the 10-day  
28 period, shall cause any lien claim to be invalid.

29 (9) Except for the arbitrator's determination itself, any such  
30 determination shall not be considered final in any legal action or  
31 proceeding, and shall not be used for purposes of collateral estoppel,  
32 res judicata, or law of the case to the extent applicable. Any finding  
33 of the arbitrator pursuant to the provisions of this act shall not be  
34 admissible for any purpose in any other action or proceeding.

35 (10) If either the lien claimant or the owner is aggrieved by the  
36 arbitrator's determination, then either party may institute a summary  
37 action in the Superior Court, Law Division, for the vacation,  
38 modification or correction of the arbitrator's determination. The  
39 arbitrator's determination shall be confirmed unless it is vacated,  
40 modified or corrected by the court. The court shall render its decision  
41 after giving due regard to the time limits and procedures set forth in  
42 this act.

43 (11) In the event a Notice of Unpaid Balance and Right to File  
44 Lien is filed and the owner conveys its interest in real property to  
45 another person before a lien claim is filed or after the filing of a lien  
46 claim in accordance with the provisions of section 8 of P.L.1993,

1 c.318 (C.2A:44A-8), then prior to or at the time of conveyance, the  
 2 owner may either post a bond, letter of credit or funds with an  
 3 attorney at law of the State of New Jersey as escrow agent or make a  
 4 deposit [with the county clerk where the improvement is located] into  
 5 an escrow account with a State or federally chartered bank, savings  
 6 bank or savings and loan association with an office in this State, in an  
 7 amount no less than the amount set forth in the Notice of Unpaid  
 8 Balance and Right to File Lien. The escrow agent upon receipt of  
 9 said amount from the owner or other interested party shall notify the  
 10 county recording officer of the county in which the property is situated  
 11 that such a deposit has been made. This notice shall be in substantially  
 12 the following form:

13  
 14 ESCROW AGENT NOTICE OF DEPOSIT REGARDING  
 15 NOTICE OF UNPAID BALANCE AND RIGHT TO FILE LIEN

16  
 17 On (date), the undersigned escrow agent (name of agent) of  
 18 (address of agent), received from (name of owner)  
 19 as a deposit for the value of the Notice of Unpaid Balance and Right  
 20 to File Lien of (name of claimant) for the work, services,  
 21 material or equipment provided in accordance with the contract  
 22 between claimant and (name) as of (date).

23 This Notice of Unpaid Balance and Right to File Lien was claimed  
 24 against the interest of (name of owner) in that certain  
 25 tract or parcel of land and premises described as Block , Lot ,  
 26 on the tax map of the of , County of , State  
 27 of New Jersey, more commonly known as (street address), for  
 28 the improvement of which property the aforementioned work, services,  
 29 materials or equipment was provided.

30 A Notice of Unpaid Balance and Right to File Lien was previously  
 31 filed with the County Recording Officer of County on  
 32 (date) as No. .

33 Amendments to the original Notice of Unpaid Balance and Right to  
 34 File Lien were recorded in the Office of the County Recording Officer  
 35 on (date) as No. . (complete if applicable).

36 Effective the date of the filing of this Escrow Agent Notice of  
 37 Deposit Regarding Notice of Unpaid Balance and Right to File Lien,  
 38 a deposit for the value of the Notice of Unpaid Balance and Right to  
 39 File Lien, including amendments, if any, is held by us in escrow.

40  
 41 Sig  
 42 nature \_\_\_\_\_  
 43 Name of Escrow Agent

44  
 45  
 46 Signed and sworn before me by \_\_\_\_\_ on \_\_\_\_\_ (date)

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Notary Public

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[For any deposit made with the county clerk] Upon receipt of such notice of deposit, the county [clerk] recording officer shall discharge the Notice of Unpaid Balance and Right to File Lien or any related lien claim against the real property for which the deposit has been made. After the issuance of the arbitrator's determination set forth in paragraphs (4) and (5) of this subsection, any amount in excess of that determined by the arbitrator to be the amount of a valid lien claim shall be returned forthwith to the owner who has made the deposit. The balance shall remain where deposited with the escrow agent unless the lien claim has been otherwise paid, satisfied by the parties, forfeited by the claimant, invalidated pursuant to paragraph (8) of this subsection or discharged under section 33 of this act. Notice shall be given by the owner in writing to the lien claimant within five days of making the deposit.

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

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(13) If the aggregate sum of all lien claims attaching to any real property that is the subject of a residential construction contract exceeds the amount due under a residential purchase agreement, less the amount due under any previously recorded mortgages or liens other than construction liens, then upon entry of judgment of all such lien claims, each lien claim shall be reduced pro rata. Each lien claimant's share then due shall be equal to the monetary amount of the lien claim multiplied by a fraction in which the denominator is the total monetary amount of all valid claims on the owner's interest in real property against which judgment has been entered, and the numerator is the amount of each particular lien claim for which judgment has been entered. The amount due under the residential purchase agreement shall be the net proceeds of the amount paid less previously recorded mortgages and liens other than construction liens and any required recording fees.

42

(cf: P.L.1993, c.318, s.21)

43

44

45

46

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

24. When judgment is obtained under this act there shall be filed in

1 the office of the county [clerk] recording officer a statement signed  
2 and sealed by the clerk of the court, containing:

- 3 a. The name of the court;
- 4 b. The names of the parties;
- 5 c. Whether judgment is against the owner, contractor or  
6 subcontractor, or against the building and land only, or both; and
- 7 d. The amount and date of judgment.

8 There shall be filed with, or as part of, the statement, an oath of  
9 the claimant, his attorney or agent, stating the amount currently due  
10 thereon based on an updated statement of the amount owing on the  
11 judgment.

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

13

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

16 30. a. When a lien claim has been filed and the claim has been  
17 paid, satisfied or settled by the parties or forfeited by the claimant, the  
18 claimant or his successor in interest or his attorney shall, within 30  
19 days, file with the county [clerk] recording officer a certificate, duly  
20 acknowledged [or proved], directing the county [clerk] recording  
21 officer to discharge the lien claim of record, which certificate shall  
22 contain:

- 23 (1) The date of filing the lien claim;
  - 24 (2) The [book and page] file number endorsed thereon;
  - 25 (3) The name of the owner of the land named in the notice;
  - 26 (4) The location of the property; and
  - 27 (5) The name of the person for whom the work, services,  
28 equipment or materials was provided.
- 29 b. If the claimant shall fail or  
30 refuse to file this certificate, then upon application by any party in  
31 interest, upon notice to the claimant, to be served upon him in the  
32 same manner as provided by section 7 of this act, or upon satisfactory  
33 proof that the claimant cannot be served, any judge of the Superior  
34 Court may, upon good cause being shown, order the lien claim  
35 discharged. The county [clerk] recording officer shall thereupon  
36 [attach] file and index the certificate or order [to the original notice of  
37 lien claim on file and shall note on the record thereof "discharged by  
38 certificate" or "discharged by court order," as the case may be].

39 c. Any lien claimant who fails to discharge a lien claim of record  
40 pursuant to this section shall be liable for all court costs, and  
41 reasonable legal expenses, including attorneys' fees, incurred by the  
42 owner, the contractor, or subcontractor, or any combination of owner,  
43 contractor and subcontractor, as applicable, to discharge or obtain the  
44 discharge of the lien, and in addition thereto, the court may enter  
45 judgment against the claimant for damages to any or all of the parties  
46 adversely affected by the failure to discharge the lien.

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

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

3       31. When a lien claim is filed against any improvement and land  
4 under this act, the owner, contractor or subcontractor may execute  
5 and file with the [proper county] clerk of the Superior Court a bond  
6 in favor of the lien claimant, with a surety company, duly authorized  
7 to transact business in this State, as surety thereon, in an amount equal  
8 to 110% of the amount claimed by the lien claimant and a payment in  
9 the amount of \$25, conditioned upon the payment of any judgment and  
10 costs that may be recovered by the lien claimant under this claim. As  
11 an alternative, the owner, contractor or subcontractor may deposit  
12 with the clerk of the Superior Court of New Jersey, funds constituting  
13 an amount equal to 110% of the amount claimed by the lien claimant  
14 and a payment in the amount of \$25, conditioned upon the payment  
15 of any judgment and costs that may be recovered by the lien claimant  
16 under this claim.

17       Any surety bond filed with the [county] clerk of the Superior Court  
18 under this section shall be discharged, and any deposit with the clerk  
19 of the Superior Court shall be returned to the depositor, without court  
20 order, upon presentment by the owner, contractor or subcontractor of  
21 any of the following:

22       (a) a duly acknowledged certificate as provided in paragraph (2) of  
23 subsection a. of section 33 of this act;

24       (b) an order of discharge as provided in paragraph (3) of  
25 subsection a. of section 33 of this act;

26       (c) a judgment of dismissal or other final judgment against the lien  
27 claimant; or

28       (d) a true copy of a Stipulation of Dismissal, with prejudice,  
29 executed by the lien claimant or its representative in any action to  
30 foreclose the lien claim which is subject to the surety bond or deposit.  
31 (cf: P.L.1993, c.318, s.31)

32

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

35       32. When the bond, deposit or any combination thereof, authorized  
36 by section 31 of this act, is properly filed or deposited, the  
37 improvements and land described in the lien claim shall thereupon be  
38 released and discharged from the claim and no execution shall issue  
39 against the improvements and land. [The words "released by bond" or  
40 "released by deposit of funds," as applicable, and a reference to the  
41 time and place of filing of the bond or deposit shall be entered by the  
42 county clerk upon the record of the lien claim.]

43 (cf: P.L.1993, c.318, s.32)

44

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

1       33. a. A lien claim~~[may]~~, together with any lis pendens filed in an  
2 action to enforce that claim, shall be discharged of record by the  
3 county ~~[clerk]~~ recording officer:

4       (1) Upon ~~[the]~~ execution and filing ~~[with the county clerk]~~ of a  
5 surety bond, or the deposit of funds with the clerk of the Superior  
6 Court of New Jersey, in favor of the claimant in an amount equal to  
7 110% of the amount of the lien claim; or

8       (2) Upon receipt of a duly acknowledged certificate, discharging  
9 the lien claim from the claimant having filed the lien claim, or his  
10 successor in interest, or his attorney; or

11       (3) Pursuant to an order of discharge by the court.

12       b. When judgment of dismissal or final other judgment against the  
13 lien claimant is entered in an action to enforce the lien claim under this  
14 act and no appeal is taken within the time allowed for an appeal, or if  
15 an appeal is taken within the time allowed for an appeal, or if an  
16 appeal is taken and finally determined against the lien claimant, the  
17 court before which the judgment was rendered, upon application and  
18 written notice to the lien claimant as the court shall direct, shall order  
19 the county ~~[clerk]~~ recording officer to enter a discharge of the lien  
20 claim.

21       c. If an appeal is taken by the claimant, the claim shall be  
22 discharged unless the claimant posts a bond, in an amount to be  
23 determined by the court, to protect the owner from the reasonable  
24 costs, expenses and damages which may be incurred by virtue of the  
25 continuance of the lien claim encumbrance.

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

27  
28       16. Section 34 of P.L.1993, c.318 (C.2A:44A-34) is amended to  
29 read as follows:

30       34. A discharge, subordination or release of a lien claim or Notice  
31 of Unpaid Balance and Right to File Lien, a receipt of payment of a  
32 lien claim, or any order of the court discharging or releasing a lien  
33 claim, shall recite ~~[the book and page]~~ the file number of the original  
34 ~~[record of the]~~ lien claim, and a full description of the property  
35 discharged or released. The county ~~[clerk]~~ recording officer may  
36 refuse to discharge, release or satisfy a lien claim or file a receipt of  
37 payment of a lien claim unless the provisions of this section have been  
38 satisfied.

39 (cf: P.L.1993, c.318, s.34)

40  
41       17. Section 35 of P.L.1993, c.318 (C.2A:44A-35) is amended to  
42 read as follows:

43       35. A discharge, subordination or release of a lien claim or Notice  
44 of Unpaid Balance and Right to File Lien shall be duly acknowledged  
45 ~~[or proved, and recorded in a properly indexed book for that purpose]~~,  
46 filed and indexed. ~~[A notation of the record of the discharge of a lien~~

1 claim or Notice of Unpaid Balance and Right to File Lien shall be  
2 endorsed upon the margin of the record in the book where the original  
3 lien or Notice of Unpaid Balance and Right to File Lien is recorded  
4 stating that the discharge is filed and recorded, giving the date of filing  
5 and recording and setting forth the book and the page number where  
6 the discharge, or receipt of payment of the lien or order discharging  
7 the lien, is recorded.】

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

9  
10 18. (New section) Unless a statute on disposition of public records  
11 provides otherwise, the county recording officer may remove any  
12 instrument filed pursuant to the provisions of P.L.1993, c.318  
13 (C.2A:44A-1 et seq.) from the files and destroy it after six years  
14 provided that the county recording officer has retained a microfilm or  
15 other photographic record.

16  
17 19. This act shall take effect on the 90th day following enactment.

18

19

20

#### STATEMENT

21

22 In December of 1993, the "Construction Lien Law" was enacted as  
23 Chapter 318 of the Laws of 1993 (C.2A:44A-1 et seq.). Chapter 318  
24 repealed the prior mechanic's lien law and established new procedures  
25 for the filing of claims for payment for work performed and materials  
26 furnished in connection with construction projects.

27 Since the enactment of P.L.1993, c.318, county recording officers  
28 (the county clerk or in some counties, the county registrar of deeds)  
29 have encountered certain procedural and technical problems in  
30 attempting to implement the provisions of the new law with regard to  
31 the filing and indexing of claim notices. The bill proposes to amend a  
32 number of the sections of chapter 318 to address these problems.

33 The bill also sets a \$15.00 fee for all filings with respect to  
34 construction lien notices, continuations and discharges.

35

36

37

38

39 Permits use of modern technology in construction lien filings and  
40 provides fees for such filings.