

P.L.2010, CHAPTER 119, *approved January 5, 2011*
Assembly, No. 410 (*First Reprint*)

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

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:

¹Assembly AFI committee amendments adopted June 10, 2010.

1 accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), for
2 improvements [thereto] to the real property. A construction manager
3 who enters into a single contract with an owner or a community
4 association for the performance of all construction work within the
5 scope of a construction manager's contract, a construction manager
6 who enters into a subcontract, or a construction manager who is
7 designated as an owner's or community association's agent without
8 entering into a subcontract is also a "contractor" for purposes of this
9 act. A licensed architect, engineer or land surveyor or certified
10 landscape architect who is not a salaried employee of the contractor, or
11 the owner or community association, performing professional services
12 related to the improvement of property in direct contract with the
13 property owner shall be considered a "contractor" for the purposes of
14 this act.

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

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

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

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

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

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

40 "Improvement" means any actual or proposed physical changes to
41 real property **[by]** resulting from the provision of work, **[or]** services,
42 or material by a contractor **[or]** , subcontractor, or supplier pursuant
43 to **[the terms of]** a contract, whether or not such physical change is
44 undertaken, and includes the construction, reconstruction, alteration,
45 repair, renovation, demolition or removal of any building or structure,
46 any addition to a building or structure, or any construction or fixture
47 necessary or appurtenant to a building or structure for use in

1 conjunction therewith. “Improvement” includes , but is not limited to,
2 excavation, digging, drilling, drainage, dredging, filling, irrigation,
3 land clearance, grading or landscaping. “Improvement” shall not
4 include the mining of minerals or removal of timber, gravel, soil, or
5 sod which is not integral to or necessitated by the improvement to real
6 property. “Improvement” shall not include public works or
7 improvements to real property contracted for and awarded by a public
8 entity. Any work or services requiring a license for performance
9 including, but not limited to, architectural, engineering, plumbing or
10 electrical construction, shall not constitute an improvement unless
11 performed by a licensed claimant.

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

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

17 “Lien claim” means a claim, by a claimant, for money for the value
18 of work, services, material or equipment furnished in accordance with
19 a contract and based upon the contract price and any amendments
20 thereto, that has been secured by a lien pursuant to this act. ‘The term
21 “value” includes retainage earned against work, services, materials or
22 equipment furnished.’¹

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

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

35 “Mortgage” means a loan which is secured by a lien on real
36 property.

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

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

1 “Public entity” includes the State, and any county, municipality,
2 district, public authority, public agency, and any other political
3 subdivision or public body in the State.

4 “Real property development” means all forms of residential and
5 non-residential real property development including, but not limited to,
6 a condominium subject to the “Condominium Act,” P.L.1969, c.257
7 (C.46:8B-1 et seq.), a housing cooperative subject to “The Cooperative
8 Recording Act of New Jersey,” P.L.1987, c.381 (C.46:8D-1 et al.), a
9 fee simple townhouse development, a horizontal property regime as
10 defined in section 2 of P.L.1963, c.168 (C.46:8A-2), and a planned
11 unit development as defined in section 3.3 of P.L.1975, c.291
12 (C.40:55D-6).

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

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

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

46 “Residential unit” means a unit in a real property development
47 designed to be transferred or sold for use as a residence, and the design

1 evidenced by a document, such as a master deed or declaration,
2 recorded with the county clerk in the county where the real property is
3 located, or a public offering statement filed with the Department of
4 Community Affairs. “Residential unit” includes a unit designed to be
5 transferred or sold for use as a residence that is part of a multi-use or
6 mixed use development project. “Residential unit” shall not include a
7 unit designed for rental purposes or a unit designed to be transferred or
8 sold for non-residential use.

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

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

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

22 “Subcontractor” means any person providing work or services in
23 connection with the improvement of real property pursuant to a
24 contract with a contractor or pursuant to a contract with a
25 subcontractor in direct privity of contract with a contractor.

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

35 “Third tier lien claimant” means a claimant who is a subcontractor
36 to a second tier lien claimant or a supplier to a second tier lien
37 claimant.

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

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

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

3 3. a. Any contractor, subcontractor or supplier who provides
4 work, services, material or equipment pursuant to a contract, shall
5 be entitled to a lien for the value of the work or services performed,
6 or materials or equipment furnished in accordance with the contract
7 and based upon the contract price, subject to [the provisions of]
8 sections [9 and 10 of this act] 6, 9, and 10 of P.L.1993, c.318
9 (C.2A:44A-6, 2A:44A-9 and 2A:44A-10). The lien shall attach to
10 the interest of the owner [in] or unit owner of the real property
11 development, or be filed against the community association, in
12 accordance with this section.

13 b. For purposes of this section,

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

18 (2) “interest of the unit owner” includes the proportionate
19 undivided interests in the common elements of the real property
20 development.

21 (3) “unit owner” means an owner of an interest in a residential
22 or nonresidential unit who is not a developer of the property and
23 acquires the unit after the master deed or master declaration is
24 recorded, or after the public offering statement is filed with the
25 Department of Community Affairs; and

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

30 (1) with the owner of the real property development, then the
31 lien shall attach to the interest of the owner of the real property
32 development;

33 (2) with the community association, the lien claim shall be filed
34 against the community association but shall not attach to any real
35 property.

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

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

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

46 (1) has expressly authorized the contract for improvement [has
47 not been authorized] in writing [by the owner of a fee simple

1 interest in the improved real property, the lien shall attach only to
2 the leasehold interest of the tenant] signed by the person against
3 whom the lien claim is asserted, which writing provides that the
4 person's interest is subject to a lien for this improvement;

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

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

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

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

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

23
24 3. Section 6 of P.L.1993, c.318 (C.2A:44A-6) is amended to read
25 as follows:

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

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

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

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

1 **(b) the claimant's identity and contractual relationship with the**
2 **owner or community association and other known parties in the**
3 **construction chain.**

4 **(2) In all cases except those involving a residential construction**
5 **contract, the lien claim form shall then be lodged for record within 90**
6 **days following the date the last work, services, material or equipment**
7 **was provided for which payment is claimed. In the case of a**
8 **residential construction contract, the lien claim form shall be lodged**
9 **for record, as required by paragraph (8) of subsection b. of section 21**
10 **of P.L.1993, c.318 (C.2A:44A-21), not later than 10 days after receipt**
11 **by the claimant of the arbitrator's determination, and within 120 days**
12 **following the date the last work, services, material or equipment was**
13 **provided for which payment is claimed. If requested, at the time of**
14 **lodging for record, the clerk shall provide a copy of the lien claim**
15 **form marked with a date and time received.**

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

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

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

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

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

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

36
37 4. Section 7 of P.L.1993, c.318 (C.2A:44A-7) is amended to read
38 as follows:

39 7. a. Within 10 **【business】** days following the **【filing】** lodging
40 **for record** of a lien claim, the claimant shall **【, by personal service or**
41 **registered or certified mail, return receipt requested, postage prepaid,】**
42 **serve 【or mail】 on the owner, or community association in accordance**
43 **with section 3 of P.L.1993, c.318 (C.2A:44A-3), and, if any, the**
44 **contractor and subcontractor against whom the claim is asserted, a**
45 **copy of the completed and signed lien claim 【as】 substantially in the**
46 **form prescribed 【in】 by section 8 of 【this act】 P.L.1993, c.318**
47 **(C.2A:44A-8) and marked "received for filing" or a similar stamp with**

1 a date and time or other mark indicating the date and time received by
 2 the county clerk. Service shall be by personal service as prescribed by
 3 the Rules of Court adopted by the Supreme Court of New Jersey or by:

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

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

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

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

27
 28 5. Section 8 of P.L.1993, c.318 (C.2A:44A-8) is amended to read
 29 as follows:

30 8. The lien claim shall be filed in substantially the following
 31 form:

32 CONSTRUCTION LIEN CLAIM

33
 34
 35 [TO THE CLERK, COUNTY OF :
 36

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

40
 41 1. (Name of claimant) of (address of claimant) has on (date)
 42 claimed a construction lien against the below stated real property of
 43 (owner against whose property the lien is claimed), in the amount of
 44 (\$), for the value of the work, services, material or equipment
 45 provided in accordance with a contract with (name of contracting
 46 party with whom claimant has a contract) for the following work,
 47 services, materials or equipment:

1 a.
2 b.
3 c.(etc.)
4 2. The amount due for work, services, materials or equipment
5 delivery provided by claimant in connection with the improvement
6 of the real property, and upon which this lien claim is based, is as
7 follows:
8 Total contract amount: \$
9 Amendments to contract: \$
10 Total contract amount and amendments to contract:\$
11 Less: Agreed upon credits: \$
12 Contract amount paid to date: \$
13 Amendments to contract amount paid to
14 date: \$
15 TOTAL REDUCTIONS FROM CONTRACT AMOUNT
16 AND AMENDMENTS TO
17 CONTRACT: \$
18 TOTAL LIEN CLAIM AMOUNT: \$
19 Notice of Unpaid Balance and Right to File Lien (if any)
20 was previously filed with the County Clerk of County on
21 19 as No. in Book Page .
22 3. This construction lien is claimed against the interest
23 of (name) as (check one):
24 Owner
25 Lessee
26 Other (describe):
27 in that certain tract or parcel of land and premises described as
28 Block , Lot , on the tax map of the of , County of ,
29 State of New Jersey, for the improvement of which property the
30 aforementioned work, services, materials or equipment was
31 provided.
32 4. The work, services, materials 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, contractor, or
35 subcontractor having a direct contractual relation with a contractor,
36 or an authorized agent of any of them), dated , between (claimant)
37 and (name of other contracting party) of (address).
38 5. The date of the provision of the last work, services, material
39 or equipment for which payment is claimed is (date).
40

41 NOTICE TO OWNER OF REAL PROPERTY
42 Your real estate may be subject to sale to satisfy the amount
43 asserted by this claim. However, your real estate cannot be sold
44 until the facts and issues which form the basis of this claim are
45 decided in a legal proceeding before a court of law. The lien
46 claimant is required by law to commence suit to enforce this claim.

Date:

CLAIMANT'S REPRESENTATION AND VERIFICATION

Claimant represents and verifies that:

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

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

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

4. The foregoing statements made by me are true, to the best of my knowledge. I am aware that if any of the foregoing statements made by me are false, this construction lien claim will be void and that I will be liable for damages to the owner or any other person injured as a consequence of the filing of this lien claim.

Name of Claimant

Signed

Type or Print Name and Title

Date:]

TO THE CLERK, COUNTY OF _____:

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

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

2. In accordance with a written contract for improvement of the above property, dated _____, with the property owner, community association, contractor, or subcontractor (circle one), named or known as (name of appropriate party), and located at (address of owner, unit owner,

1 community association, contractor or subcontractor), this claimant performed
 2 the following work or provided the following services, material or
 3 equipment:

4 a. _____

5 b. _____

6 c. _____ etc. _____

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

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

13 A. Initial Contract Price: \$ _____

14 B. Executed Amendments to Contract Price/Change Orders:
 15 \$ _____

16 C. Total Contract Price (A + B) = \$ _____

17 D. If Contract Not Completed, Value Determined in Accordance
 18 with the Contract of Work Completed or Services, Material,
 19 Equipment Provided : _____

20 E. Total from C or D (whichever is applicable): \$ _____

21 F. Agreed upon Credits: \$ _____

22 G. Amount Paid to Date: \$ _____

23 TOTAL LIEN CLAIM AMOUNT E - [F + G] =
 24 \$ _____

25
 26 NOTICE OF UNPAID BALANCE AND ARBITRATION
 27 AWARD

28
 29 This claim (check one) does _____ does not _____ arise from a
 30 Residential Construction Contract. If it does, complete 5 and 6 below;
 31 if not residential, complete 5 below, only if applicable. If not
 32 residential and 5 is not applicable, skip to Claimant's Representation
 33 and Verification.

34 5. A Notice of Unpaid Balance and Right to File Lien (if any) was
 35 previously filed with the County Clerk of _____ County
 36 on _____, 20__ as No. _____, in Book _____ and Page
 37 _____.

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

40
 41 CLAIMANT'S REPRESENTATION AND VERIFICATION

42 Claimant represents and verifies under oath that:

43 1. I have authority to file this claim.

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

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

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

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

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

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

Name of Claimant

Signed

(Type or Print Name and Title)

SUGGESTED NOTARIAL FOR INDIVIDUAL CLAIMANT:

STATE OF NEW JERSEY

COUNTY OF [] ss:

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

NOTARY PUBLIC

SUGGESTED NOTARIAL FOR CORPORATE OR LIMITED LIABILITY CLAIMANT:

STATE OF NEW JERSEY

COUNTY OF [] ss:

On this day of 20 , before me, the subscriber, personally appeared [person signing on behalf of claimant(s)] who, I am

1 satisfied is the Secretary [or other officer/manager/agent] of the
2 Corporation [partnership or limited liability company] named herein and
3 who by me duly sworn/affirmed, asserted authority to act on behalf
4 of the Corporation [partnership or limited liability company] and who, by
5 virtue of its Bylaws, or Resolution of its Board of Directors [or
6 partnership or operating agreement] executed the within instrument on
7 its behalf, and thereupon acknowledged that claimant signed, sealed
8 and delivered same as claimant's act and deed, for the purposes
9 herein expressed.

10
11 _____
12 NOTARY PUBLIC

13
14 NOTICE TO OWNER OF REAL PROPERTY
15 NOTICE TO CONTRACTOR OR SUBCONTRACTOR, IF
16 APPLICABLE
17

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

23 The claimant filing this lien claim shall forfeit all rights to enforce
24 the lien claim and shall be required to discharge the lien claim of
25 record, if the claimant fails to bring an action in the Superior Court, in
26 the 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 or
33 community association, contractor, or subcontractor against whom a
34 lien claim is filed, as appropriate, requiring the claimant to commence
35 an action to establish the lien claim.

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

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

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

4 2. causing the lien claim to be discharged by filing a surety bond or
5 making a deposit of funds as provided for in section 31 of P.L.1993,
6 c.318 (C.2A:44A-31), by which the owner will retain the right to
7 challenge this lien claim in a legal proceeding before a court of law.
8 (cf: P.L.1993, c.318, s.8)

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

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

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

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

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

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

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

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

36 (3) liquidated damages;

37 (4) collusive payments;

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

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

46 d. Subject to subsection c. above, no lien fund exists, if, at the
47 time of service of a copy of the lien claim, the owner or community

1 association has fully paid the contractor for the work performed or for
2 services, material or equipment provided.

3 e. For purposes of a lien fund calculation, the “earned amount of
4 the contract” is the contract price unless the party obligated to perform
5 has not completed the performance in which case the “earned amount
6 of the contract” is the value, as determined in accordance with the
7 contract, of the work performed and services, material or equipment
8 provided.

9 f. If more than one lien claimant will participate in a lien fund,
10 the lien fund shall be established as of the date of the first of the
11 participating lien claims lodged for record unless the earned amount of
12 the contract increases, in which case the lien fund shall be calculated
13 from the date of the increase.

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

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

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

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

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

supplier, or a contract between a subcontractor of the contractor and any supplier or other subcontractor; or

b. In the case of lien claim filed by a subcontractor or supplier, the amount provided in subsection a. of this section, or the contract price of the contract between the contractor or subcontractor and the subcontractor or supplier, as applicable, pursuant to which the work, services, materials or equipment is provided by the subcontractor or supplier, less the amount of payments duly made, if any, prior to receipt of a copy of the lien claim pursuant to section 7 of this act, to the contractor or supplier or any other claimant who has filed a lien claim or a Notice of Unpaid Balance and Right to File Lien pursuant to a contract with such subcontractor or supplier, whichever is less.】
(cf: P.L.1993, c.318, s.10)

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

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

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

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

(3) the partial payment of the lien claim.

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

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

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

AMENDMENT TO CONSTRUCTION LIEN CLAIM

TO THE CLERK, COUNTY OF :

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

6 2. This construction lien claim was claimed against the interest
 7 of (*name*) as **[(check one)]** (*circle one*): **Owner** Lessee
 8 **Other** owner, unit owner, community association or other party; (if
 9 "other," describe: _____)" in that certain tract or parcel of
 10 land and premises described as Block , Lot , on the tax map
 11 of the (*municipality*) of , County of , State of New
 12 Jersey, for the improvement of which property the aforementioned
 13 work, services, **[(materials)]** material or equipment was provided. (*If*
 14 *the claim was against a community association in accordance with section 3 of*
 15 *P.L.1993, c.318 (C.2A:44A-3), set forth the name of the community association*
 16 *and the name and location of the property development.*)

17 3. This amends a lien claim which was previously lodged for
 18 record on _____, 20 and filed with the County Clerk
 19 of County on , **[19]** 20 and recorded on
 20 _____, 20 as No. in Book No. , Page . A
 21 Notice of Unpaid Balance and Right to File Lien (if any) was
 22 previously filed with the County Clerk of on , **[19]**
 23 20 and recorded on _____, 20 as No. in Book
 24 No. , Page .

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

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

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

- 34 a.
 35 b.
 36 c. (etc.)

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

39 8. The reason for this amendment is _____
 40

41 CLAIMANTS REPRESENTATION AND VERIFICATION

42
 43 (*Same as for lien claim*)

45 NOTICE TO OWNER OF REAL PROPERTY

46
 47 (*Same as for lien claim*)

1 NOTICE TO SUBCONTRACTOR OR CONTRACTOR

2
3 *(Same as for lien claim)*4 **【CLAIMANT'S REPRESENTATION AND VERIFICATION**5 **(Same as for lien claim)】**

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

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

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

27
28 10. Section 13 of P.L.1993, c.318 (C.2A:44A-13) is amended to
29 read as follows:30 13. a. **【Each】** The county clerk shall provide a book designated
31 as the "Construction Lien Book" in which **【each clerk】** shall
32 **【enter】** be entered each Notice of Unpaid Balance and Right to File
33 Lien **【and】**, Amended Notice of Unpaid Balance and Right to File
34 Lien, **【and each】** lien claim and amended lien claim, and **【each】**
35 discharge, subordination or release of a lien claim or Notice of
36 Unpaid Balance and Right to File Lien presented for filing pursuant
37 to **【the provisions of】** this act.38 b. The county clerk shall cause marginal notations to be made
39 upon each filed document **【filed pursuant to this act,】** as follows:40 (1) upon each Notice of Unpaid Balance and Right to File Lien
41 **【whenever an Amended Notice of Unpaid Balance and Right to File**
42 **Lien or a discharge relative】**, the date an amendment to that Notice
43 or discharge thereof, and related lien claim or amendment thereto is
44 filed;45 (2) upon each lien claim **【whenever】**, the date an **【amended**
46 **lien claim relative】** amendment thereto is filed; **【upon each Notice**

1 of Unpaid Balance and Right to File Lien whenever a lien claim or
 2 amended lien claim relative thereto is filed; upon each lien claim or
 3 amended lien claim whenever a discharge, subordination or release
 4 of a lien claim relative thereto is filed. In addition, the clerk shall
 5 cause a notation of the date of commencement of an action to
 6 enforce a lien claim to made] and the date a discharge,
 7 subordination or release thereof is filed; and

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

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

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

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

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

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

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

35
 36 11. Section 14 of P.L.1993, c.318 (C.2A:44A-14) is amended to
 37 read as follows:

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

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

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

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

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

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

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

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

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

1 b. If a defense to a lien claim is without basis, the party
2 maintaining the defense shall be liable for all court costs, and
3 reasonable legal expenses, including , but not limited to, attorneys'
4 fees, incurred by any of the parties adversely affected by the
5 defense to the lien claim. The court shall, in addition, enter
6 judgment against the party maintaining **the frivolous** this defense
7 for damages to any of the parties adversely affected **by said**
8 defense thereby.

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

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

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

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

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

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

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

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

d. If a lien claimant receives payment of ~~its~~ the proportionate share but refuses to discharge its lien claim, then upon application to a court having jurisdiction thereof, the court shall order the discharge of the lien claim to the extent of that proportionate share. The lien claimant shall be further subject to ~~the provisions of~~ section 30 of ~~this act~~ P.L.1993, c.318 (C.2A:44A-30), and any amounts to be paid shall be paid from the amount due the claimant. (cf: P.L.1993, c.318, s.18)

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

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

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

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

[TO THE CLERK, COUNTY OF _____ :

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

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

a.

b.

c. (etc.)

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

5 Total contract amount: \$
6 Amendments to contract: \$
7 Total contract amount and amendments to contract: \$
8

9 Less: Agreed upon credits: \$
10 Contract amount paid to date: \$
11

12 Amendments to contract amount paid to date: \$
13

14 TOTAL REDUCTIONS FROM CONTRACT AMOUNT AND
15 AMENDMENTS TO CONTRACT: \$
16

17 TOTAL LIEN CLAIM AMOUNT: \$
18

19 3. This construction lien is to be claimed against the interest of
20 (name) as (check one):
21

22 Owner
23

24 Lessee
25

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

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

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

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

42 7. This notification has been filed prior or subsequent to
43 completion of the work, services, materials or equipment as
44 described above. The purpose of this notification is to advise the
45 owner and any other person who is attempting to encumber or take
46 transfer of said property described above that a potential
47 construction lien may be filed within the 90 day period following

1 the date of the provision of the last work, services, materials or
2 equipment as set forth in paragraph 5.

3

4 CLAIMANT'S REPRESENTATION AND VERIFICATION

5 Claimant represents and verifies that:

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

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

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

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

20

Name of Claimant

21

Signed

22

Type or Print Name and Title

23

Date:

24

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

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

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

46 e. The filing of a Notice of Unpaid Balance and Right to File
47 Lien shall not constitute the filing of a lien claim in accordance

1 with the provisions of this act, nor does it extend the time for the
2 filing of a lien claim in accordance with the provisions of this act.

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

9 g. A Notice of Unpaid Balance and Right to File Lien may be
10 amended by the filing of an Amended Notice of Unpaid Balance
11 and Right to File Lien in accordance with the provisions of this
12 section.】

13
14 TO THE CLERK, COUNTY OF _____:

15
16 NOTICE OF UNPAID BALANCE AND RIGHT TO FILE
17 LIEN

18
19 In accordance with the "Construction Lien Law," P.L.1993,
20 c.318 (C.2A:44A-1 et al.), notice is hereby given that:

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

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

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

4 a. _____
 5 b. _____
 6 c. _____ etc.

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

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

13
 14 A. Initial Contract Price: \$ _____

15 B. Executed Amendments to Contract Price/Change Orders:
 16 \$ _____

17 C. Total Contract Price (A + B) = \$ _____

18 D. If Contract Not Completed, Value Determined in Accordance
 19 with Contract of Work Completed or Services, Material or
 20 Equipment Provided : _____

21 E. Total from C or D (whichever is applicable): \$ _____

22 F. Agreed upon Credits: \$ _____

23 G. Amount Paid to Date: \$ _____

24 TOTAL LIEN CLAIM AMOUNT E - [F + G] = \$ _____

25
 26 6. The written contract (is) (is not) (cross out inapplicable portion) a
 27 residential construction contract as defined in section 2 of P.L.1993,
 28 c.318 (C.2A:44A-2).

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

39 40 CLAIMANT'S REPRESENTATION AND VERIFICATION

41
 42 Claimant represents and verifies that:

43
 44 1. I have authority to file this Notice of Unpaid Balance and
 45 Right to File Lien.

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

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

4. The Notice of Unpaid Balance and Right to File Lien has been lodged for record within 90 days, or in the case of a residential construction contract within 60 days, from the last date upon which the work, services, material or equipment for which payment is claimed was provided.

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

Name _____ of
Claimant _____

Signed _____

(Type or Print Name and Title)

SUGGESTED NOTARIAL FOR INDIVIDUAL CLAIMANT:

STATE OF NEW JERSEY

COUNTY OF [] ss:

On this _____ day of _____, 20____, before me, the subscriber, personally appeared (person signing on behalf of claimant(s)) who, I am satisfied, is/are the person(s) named in and who executed the within instrument, and thereupon acknowledged that claimant(s) signed, sealed and delivered the same as claimant's (s') act and deed, for the purposes therein expressed.

NOTARY PUBLIC

SUGGESTED NOTARIAL FOR CORPORATE OR LIMITED LIABILITY CLAIMANT:

STATE OF NEW JERSEY

COUNTY OF [] ss:

On this _____ day of _____, 20____, before me, the subscriber, personally appeared (person signing on behalf of claimant(s)) who, I am satisfied is the Secretary (or other officer/manager/agent) of the

1 Corporation (partnership or limited liability company) named herein and
 2 who by me duly sworn/affirmed, asserted authority to act on behalf
 3 of the Corporation (partnership or limited liability company) and who, by
 4 virtue of its Bylaws, or Resolution of its Board of Directors (or
 5 partnership or operating agreement) executed the within instrument on
 6 its behalf, and thereupon acknowledged that claimant signed, sealed
 7 and delivered same as claimant's act and deed, for the purposes
 8 herein expressed.

10 NOTARY PUBLIC

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

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

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

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

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

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

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

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

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

46 (1) As a condition precedent to the filing of any lien arising
47 under a residential construction contract, a lien claimant shall first

1 file a Notice of Unpaid Balance and Right to File Lien by lodging
2 for record the Notice within 60 days following the last date that
3 work, services, material or equipment were provided for which
4 payment is claimed in accordance with ~~the provisions of~~
5 subsection ~~a.~~ b. of section 20 of ~~this act~~ P.L.1993, c.318
6 (C.2A:44A-20), and comply with ~~all other provisions~~ the
7 remainder of this section.

8 (2) Upon ~~the filing of~~ its lodging for record, a Notice of
9 Unpaid Balance and Right to File Lien, ~~service of the Notice of~~
10 ~~Unpaid Balance and Right to File Lien~~ shall be ~~effected~~ served
11 in accordance with the provisions ~~of~~ for the service of lien claims
12 in section 7 of ~~this act~~ P.L.1993, c.318 (C.2A:44A-7).

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

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

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

1 (4) Upon the closing of all hearings in the arbitration, the arbitrator
2 shall make the following determinations: (a) whether the Notice of
3 Unpaid Balance and Right to File Lien was in compliance with section
4 20 of **[this act]** P.L.1993, c.318 (C.2A:44A-20) and whether service
5 was proper under section 7 of **[this act]** P.L.1993, c.318 (C.2A:44A-
6 7); (b) the earned amount of the contract between the owner and the
7 contractor in accordance with section 9 of P.L.1993, c.318 (C.2A:44A-
8 9); (c) the validity and amount of any lien claim which may be filed
9 pursuant to the Notice of Unpaid Balance and Right to File Lien; **[(c)]**
10 **(d)** the validity and amount of any liquidated or unliquidated setoffs or
11 counterclaims to any lien claim which may be filed; and **[d]** **(e)** the
12 allocation of costs of the arbitration among the parties. When making
13 the above determination, the arbitrator shall also consider all
14 determinations made by that arbitrator in any earlier arbitration
15 proceeding pertaining to the same residential construction.

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

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

1 this act. The arbitrator shall resolve a dispute regarding the
2 timeliness of the demand for arbitration.

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

10 (8) Upon determination by the arbitrator that there is an amount
11 which, pursuant to a valid lien shall attach to the improvement, the
12 lien claimant shall, within 10 days of the lien claimant's receipt of
13 the determination, **[file]** lodge for record such lien claim in
14 accordance with **[the provisions of]** section 8 of **[this act]**
15 P.L.1993, c.318 (C.2A:44A-8) and furnish any bond, letter of credit
16 or funds required by the arbitrator's decision. The failure to **[file]**
17 lodge for record such a lien claim, or furnish the bond, letter of
18 credit or funds, within the 10-day period, shall cause any lien claim
19 to be invalid.

20 (9) Except for the arbitrator's determination itself, any such
21 determination shall not be considered final in any legal action or
22 proceeding, and shall not be used for purposes of collateral
23 estoppel, res judicata, or law of the case to the extent applicable.
24 Any finding of the arbitrator pursuant to **[the provisions of]** this act
25 shall not be admissible for any purpose in any other action or
26 proceeding.

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

40 (11) In the event a Notice of Unpaid Balance and Right to File
41 Lien is filed and the owner conveys its interest in real property to
42 another person before a lien claim is filed, then prior to or at the
43 time of conveyance, the owner may make a deposit with the county
44 clerk where the improvement is located, in an amount no less than
45 the amount set forth in the Notice of Unpaid Balance and Right to
46 File Lien. For any deposit made with the county clerk, the county
47 clerk shall discharge the Notice of Unpaid Balance and Right to File

1 Lien or any related lien claim against the real property for which the
2 deposit has been made. After the issuance of the arbitrator's
3 determination set forth in paragraphs (4) and (5) of this subsection,
4 any amount in excess of that determined by the arbitrator to be the
5 amount of a valid lien claim shall be returned forthwith to the
6 owner who has made the deposit. The balance shall remain where
7 deposited unless the lien claim has been otherwise paid, satisfied by
8 the parties, forfeited by the claimant, invalidated pursuant to
9 paragraph (8) of this subsection or discharged under section 33 of
10 **[this act]** P.L.1993, c.318 (C.2A:44A-33). Notice shall be given by
11 the owner in writing to the lien claimant within five days of making
12 the deposit.

13 (12) Solely for those lien claims arising from a residential
14 construction contract, if a Notice of Unpaid Balance and Right to
15 File Lien is determined to be without basis, the amount of the
16 Notice of Unpaid Balance and Right to File Lien is significantly
17 overstated, or the Notice of Unpaid Balance and Right to File Lien
18 is not **[filed]** lodged for record: (a) in substantially the form, **[or]**
19 (b) in the manner, or (c) at a time **[not]** in accordance with **[the**
20 **provisions of]** this act, then the claimant shall be liable for all
21 damages suffered by the owner or any other party adversely
22 affected by the Notice of Unpaid Balance and Right to File Lien,
23 including all court costs, reasonable attorneys' fees and legal
24 expenses incurred.

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

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

41

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

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

46 a. Every mortgage recorded before the filing of a lien claim or the
47 filing of a Notice of Unpaid Balance and Right to File Lien in

1 accordance with section 20 of P.L.1993, c.318 (C.2A:44A-20), shall
2 have priority as to the land or other interest in real property described
3 and any improvement wholly or partially erected or thereafter to be
4 erected, constructed or completed thereon, over any lien established by
5 virtue of P.L.1993, c.318 (C.2A:44A-1 et al.) to the extent that:

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

11 (2) the mortgage secures funds advanced after the filing of a lien
12 claim or the filing of a Notice of Unpaid Balance and Right to File
13 Lien in accordance with section 20 of P.L.1993, c.318 (C.2A:44A-20),
14 and the funds are applied in accordance with paragraphs (1) through
15 (7) of subsection b. of this section.

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

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

27 **[b.]** (2) The payment to or the securing of payment by, the party
28 against whose interest the lien claim is filed of all or part of the
29 purchase price of the land covered thereby and any subsequent
30 payment made for the improvements to the land, including but not
31 limited to any advance payment of interest to the holder of the
32 mortgage as required by the mortgagee as a condition of the loan;

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

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

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

45 **[f. Payment]** (6) The payment to the owner of that portion of the
46 purchase price of the real property on which the improvements are
47 made or to be made which have previously been paid by the owner,

1 exclusive of any interest or any other carrying costs of such real
2 property, provided, however, that at the time of the payment of such
3 funds to the owner, the budget upon which the loan was made
4 indicated that the amount of the loan is not less than the total of:
5 **[(1)] (a)** the purchase price of the real property, **[(2)] (b)** the cost
6 of constructing the improvements, and **[(3)] (c)** any cost listed in
7 **[subsections c., d. and e.] paragraphs (3), (4), and (5) of subsection**
8 **b. of this section; or**

9 **[g.] (7)** An escrow in an amount not to exceed 150% of the
10 amount necessary to secure payment of charges described in
11 **[subsections a., c., d.] paragraphs (1), (3), (4) and [e.] (5) of**
12 **subsection b. of this section.**

13 c. Nothing in P.L.1993, c.318 (C.2A:44A-1 et al.) shall be
14 deemed to supersede the mortgage priority provisions of R.S.46:9-8
15 or diminish the effect of a Notice of Settlement filed pursuant to
16 P.L.1979, c.406 (C.46:16A-1 et seq.).

17 (cf: P.L.1993, c.318, s.22)

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

21 23. a. The amount due a lien claimant shall be paid only after the
22 lien claim has been established by judgment, or, in the case of an
23 execution sale, only to those lien claimants whose lien claims were
24 filed before application was made to the court for distribution of the
25 sale proceeds. All lien claims established by judgment are valid
26 claims that shall be concurrent and shall be paid [pro rata out of the
27 lien fund and the proceeds of the sale authorized by this act] as
28 provided in subsection c. of this section.

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

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

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

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

1 total of the claims exceeds the allocation to that first tier lien claimant,
2 the second tier claimants' allocations shall be reduced pro rata so as
3 not to exceed that first tier lien claimant allocation;

4 (3) From the allocation to each second tier lien claimant, amounts
5 shall be allocated equal to the valid claims of third tier lien claimants
6 whose claims derive from contracts with that second tier lien claimant.
7 If the total of the claims is less than the allocation to that second tier
8 claimant, the second tier lien claimant shall be paid the balance. If the
9 total of the claims exceeds the allocation to that second tier lien
10 claimant, the allocation to the third tier lien claimants shall be reduced
11 pro rata so as not to exceed that second tier lien claimant allocation;

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

19 (5) If there are no first or second tier lien claimants, the lien fund
20 for third tier lien claimants shall be allocated in amounts equal to that
21 third tier's valid claims. If the total of the claims of any group of third
22 tier lien claimants exceeds the lien fund for that group of claimants as
23 provided by section 9 of P.L.1993, c.318 (C.2A:44A-9), the
24 allocations shall be reduced pro rata so as not to exceed that lien fund.
25 (cf: P.L.1993, c.318, s.23)

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

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

44 c. The court shall stay the suit to the extent that the lien claimant's
45 contract or the contract of another party against whose account the lien
46 claim is asserted provides that any disputes pertaining to the validity or

1 amount of a lien claim are subject to arbitration or other dispute
2 resolution mechanism.

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

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

9 f. The judgment to be entered in a suit to enforce a lien claim shall
10 (1) establish the amount due to the lien claimant; and (2) direct the
11 public sale by the sheriff or other such officer as the court may direct
12 of the real property and improvement affected by the lien. The
13 proceeds of the sale shall be distributed in accordance with section 23
14 of P.L.1993, c.318 (C.2A:44A-23). If funds are realized at the sale in
15 an amount greater than the lien fund, the surplus funds shall be
16 distributed in accordance with law.

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

20 h. A judgment obtained against a community association that is
21 unpaid may be enforced by assessment against unit owners as they
22 would be assessed for any other common expense, after reasonable
23 notice, and in a manner directed by the court. In ordering assessments,
24 the court shall be guided by the master deed, bylaws or other
25 document governing the association. A judgment shall not be
26 enforced by the sale of any common elements, common areas or
27 common buildings or structures of a real property development.

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

33
34 19. Section 25 of P.L.1993, c.318 (C.2A:44A-25) is amended to
35 read as follows:

36 25. If judgment in an action to enforce a lien claim under this
37 act is **[against the owner, contractor or subcontractor]** entered in
38 favor of the lien claimant, a writ of execution may issue thereon,
39 **[as in other cases; if against the improvements and land, a special**
40 **writ of execution may issue to make the amount recovered therein**
41 **by sale of the improvements and land.**

42 If both general and special judgments are given, both writs of
43 execution may issue, separately or combined in one writ, and one of
44 such writs may issue after the return of the other for the whole
45 amount recovered or the residue as the case may require] in
46 accordance with the judgment.

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

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

3 30. a. When a lien claim has been filed and the claim has been
4 paid, satisfied or settled by the parties or forfeited by the claimant,
5 the claimant or **his** claimant's successor in interest or **his**
6 attorney shall, within 30 days of payment, satisfaction or settlement,
7 or within 7 days of demand by any interested party, file with the
8 county clerk a certificate, duly acknowledged or proved, directing
9 the county clerk to discharge the lien claim of record, which
10 certificate shall contain:

11 (1) The date of filing the lien claim;

12 (2) The book and page number endorsed thereon;

13 (3) The name of the owner of the land, or the community
14 association, if applicable, named in the notice;

15 (4) The location of the property; and

16 (5) The name of the person for whom the work, services,
17 equipment or materials was provided.

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

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

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

1 OWNER (OR COMMUNITY ASSOCIATION) AFFIDAVIT OF
2 PAYMENT TO DISCHARGE LIEN CLAIM

3
4 TO THE CLERK, COUNTY OF

5 The undersigned, being duly sworn upon the undersigned's oath,
6 averts as follows:

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

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

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

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

38
39 Name of Owner/Community Association

40 Signed _____

41 (Type or Print Name and Title)

42
43 NOTARIAL FOR INDIVIDUAL OWNER

44
45 STATE OF NEW JERSEY

46 COUNTY OF [_____] ss:

On this _____ day of _____ 20____, before me, the subscriber, personally appeared (*name of owner/community association*) who, I am satisfied, is/are the person(s) named in and who executed the within instrument, and thereupon acknowledged that the owner/community association signed, sealed and delivered the same as the owner's/community association's act and deed, for the purposes therein expressed.

NOTARY PUBLIC

NOTARIAL FOR CORPORATE OR LIMITED LIABILITY
OWNER/COMMUNITY ASSOCIATION:

STATE OF NEW JERSEY
COUNTY OF 9 () ss:

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

NOTARY PUBLIC

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

f. Upon discharge of record in all cases, the party who filed the enforcement action shall cause the Notice of Lis Pendens to be cancelled or discharged of record pursuant to N.J.S.2A:15-6 et seq. Any party who filed the enforcement action who fails to cancel or discharge the lis pendens of record pursuant to this section shall be liable for all court costs, and reasonable legal expenses, including but

1 not limited to, attorneys' fees, incurred by the owner, community
2 association, the contractor, or subcontractor, or any other interested
3 party, or any combination thereof, as applicable, to obtain the
4 cancellation or discharge of the lis pendens, and in addition thereto,
5 the court shall enter judgment against the claimant for damages to any
6 or all of the parties adversely affected by the failure to cancel or
7 discharge the lis pendens.

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

9
10 21. Section 31 of P.L.1993, c.318 (C.2A:44A-31) is amended to
11 read as follows:

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

32 b. As an alternative, the owner, community association,
33 contractor or subcontractor may deposit with the clerk of the
34 Superior Court of New Jersey, funds constituting an amount equal
35 to 110% of the amount claimed by the lien claimant [and a] ¹, but
36 in the case of a lien claim arising from a residential construction
37 contract, no greater than the earned amount of the contract between
38 the owner and the contractor as determined by the arbitrator in
39 accordance with paragraph (4) of subsection b. of section 21 of
40 P.L.1993, c.318 (C.2A:44A-21). The deposit shall be made¹ along
41 with payment in the amount of \$25, conditioned upon the payment
42 of any judgment and costs that may be recovered by the lien
43 claimant under this claim. The deposit may be made without the
44 necessity of commencing any legal action. The written receipt
45 provided by the court clerk for the deposit made may be filed with
46 the county clerk as evidence of that deposit.

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

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

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

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

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

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

(Name of Bond Company)
(Bond No. _____) Bond Amount \$ _____

BOND DISCHARGING CONSTRUCTION LIEN

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

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

NOW THEREFORE, in consideration of the discharge of said lien by the Clerk, the Principal and (name of bond company) as surety, having an office at (address of bond company) and authorized to do business as a surety, do hereby pursuant to the statute provided, in such case made and jointly and severally undertake and become

1 bound to the Clerk in an amount not exceeding the Penal Sum, (\$)
 2 conditioned for the payment of any and all judgments that may be
 3 rendered against said property in favor of the Lienor, its successors
 4 or assigns, in any action or proceedings to enforce the alleged lien
 5 as described.

6 Sealed with our seal and dated the day of (month), (year)
 7
 8

9 Witness:_____ (Name of principal)
 10 By:(Signature)
 11 Title:(Printed name and title
 12 Witness:_____ (Name of Bond Company)
 13 By: (Signature)
 14 Title:(Printed name and
 15 title of signatory)

16 (cf: P.L.1993, c.318, s.31)
 17

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

20 33. a. A lien claim **【may】** shall be discharged of record by the
 21 county clerk:

22 (1) Upon the execution and filing with the county clerk of a
 23 surety bond, or the deposit of funds with the clerk of the Superior
 24 Court of New Jersey, in favor of the claimant in an amount equal to
 25 110% of the amount of the lien claim; or

26 (2) Upon receipt of a duly acknowledged certificate, discharging
 27 the lien claim from the claimant having filed the lien claim, or **【his】**
 28 claimant's successor in interest, or **【his】** attorney; or

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

39 **【(3)】** (4) Pursuant to an order of discharge by the court.

40 b. When judgment of dismissal or final other judgment against
 41 the lien claimant is entered in an action to enforce the lien claim
 42 under this act and no appeal is taken within the time allowed for an
 43 appeal, or if an appeal is taken within the time allowed for an
 44 appeal, or if an appeal is taken and finally determined against the
 45 lien claimant, the court before which the judgment was rendered,
 46 upon application and written notice to the lien claimant as the court

1 shall direct, shall order the county clerk to enter a discharge of the
2 lien claim.

3 c. If an appeal is taken by the claimant, the claim shall be
4 discharged unless the claimant posts a bond, in an amount to be
5 determined by the court, to protect the owner or community
6 association from the reasonable costs, expenses and damages which
7 may be incurred by virtue of the continuance of the lien claim
8 encumbrance.

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

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

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

21
22 23. Section 35 of P.L.1993, c.318 (C.2A:44A-35) is amended to
23 read as follows:

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

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

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

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

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

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

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

15 e. Any person to whom a written request has been made
16 pursuant to [the provisions of] subsection a. or b. of this section
17 who does not provide a list in compliance with this section shall be
18 [directly] liable in damages to: (1) the party requesting the list; or
19 [to] (2) the owner or community association, including, but not
20 limited to, court costs and the reasonable legal expenses, including
21 attorneys' fees, incurred by [said party or the owner, or both] any
22 or all of them, in defending or causing the discharge of a lien claim
23 asserted by a party whose name [has been] is omitted from the list.
24 (cf: P.L.1993, c.318, s.37)
25

26 25. The following sections are repealed:
27 Section 16 of P.L.1993, c.318 (C.2A:44A-16);
28 Section 19 of P.L.1993, c.318 (C.2A:44A-19);
29 Section 24 of P.L.1993, c.318 (C.24:44A-24);
30 Section 26 of P.L.1993, c.318 (C.2A:44A-26);
31 Section 28 of P.L.1993, c.318 (C.2A:44A-28); and
32 Section 29 of P.L.1993, c.318 (C.2A:44A-29).
33

34 26. This act shall take effect immediately.
35
36

37
38
39 Revises the "Construction Lien Law."