

[First Reprint]

**SENATE, No. 1846**

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**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

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INTRODUCED MAY 10, 2010

**Sponsored by:**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Senator JEFF VAN DREW**

**District 1 (Cape May, Atlantic and Cumberland)**

**Co-Sponsored by:**

**Senator S.Kean**

**SYNOPSIS**

Revises the “Construction Lien Law.”

**CURRENT VERSION OF TEXT**

As reported by the Senate Commerce Committee on November 8, 2010,  
with amendments.



**(Sponsorship Updated As Of: 10/1/2010)**

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

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

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

9 2. As used in this act:

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

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SCM committee amendments adopted November 8, 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38

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

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

- 1 the interest of the owner **[in]** or unit owner of the real property  
2 development, or be filed against the community association, in  
3 accordance with this section.
- 4 b. For purposes of this section,
- 5 (1) “interest of the owner of the real property development”  
6 includes interest in any residential or nonresidential units not yet  
7 sold or transferred and the proportionate undivided interests in the  
8 common elements attributable to those units;
- 9 (2) “interest of the unit owner” includes the proportionate  
10 undivided interests in the common elements of the real property  
11 development.
- 12 (3) “unit owner” means an owner of an interest in a residential  
13 or nonresidential unit who is not a developer of the property and  
14 acquires the unit after the master deed or master declaration is  
15 recorded, or after the public offering statement is filed with the  
16 Department of Community Affairs; and
- 17 c. In the case of a condominium, notwithstanding the  
18 provisions of the “Condominium Act,” P.L.1969, c.257 (C.46:8B-1  
19 et seq.), or in the case of any other real property development with  
20 common elements or common areas or facilities, if the contract is:
- 21 (1) with the owner of the real property development, then the  
22 lien shall attach to the interest of the owner of the real property  
23 development;
- 24 (2) with the community association, the lien claim shall be filed  
25 against the community association but shall not attach to any real  
26 property.
- 27 In either case, if the work, services, material or equipment are  
28 performed or furnished as part of the common elements or facilities  
29 of a real property development, the lien shall not attach to the  
30 interest of the unit owner.
- 31 d. If the work, services, material or equipment are performed or  
32 furnished solely within or as part of a residential or nonresidential  
33 unit, the lien shall attach only to the interest of the unit owner.
- 34 e. If a tenant contracts for improvement of the real property,  
35 the lien shall attach to the leasehold estate of the tenant and to the  
36 interest in the property of any person who:
- 37 (1) has expressly authorized the contract for improvement [has  
38 not been authorized] in writing [by the owner of a fee simple  
39 interest in the improved real property, the lien shall attach only to  
40 the leasehold interest of the tenant] signed by the person against  
41 whom the lien claim is asserted, which writing provides that the  
42 person’s interest is subject to a lien for this improvement;
- 43 (2) has paid, or agreed in writing to pay, the majority of the cost  
44 of the improvement; or
- 45 (3) is a party to the lease or sublease that created the leasehold  
46 interest of the tenant and the lease or sublease provides that the  
47 person’s interest is subject to a lien for the improvement.

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

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

11       '[g.] h.' Nothing in this act shall be construed to limit the right  
12 of any claimant from pursuing any other remedy provided by law.

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

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

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

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

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

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

37       (b) the claimant's identity and contractual relationship with the  
38 owner or community association and other known parties in the  
39 construction chain.

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



1 following the date the last work, services, material or equipment was  
2 provided for which payment is claimed. If requested, at the time of  
3 lodging for record, the clerk shall provide a copy of the lien claim  
4 form marked with a date and time received.

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

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

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

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

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

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

25  
26 4. Section 7 of P.L.1993, c.318 (C.2A:44A-7) is amended to read  
27 as follows:

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

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

42 (2) ordinary mail addressed to the last known business or residence  
43 address [or place of residence] of the owner [and, if any, of the] or  
44 community association, contractor [and the] or subcontractor[,  
45 against whom the claim is asserted. Proof of timely mailing shall  
46 satisfy the requirement of service of the lien claim]. A lien claim  
47 served upon a community association need not be served upon

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

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

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

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

1. (Name of claimant) of (address of claimant) has on (date) claimed a construction lien against the below stated real property of (owner against whose property the lien is 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:

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

Total contract amount:	\$
Amendments to contract:	\$
Total contract amount and amendments to contract:	\$
Less: Agreed upon credits:	\$

3. This construction lien is claimed against the interest  
of (name) as (check one):  
Owner  
Lessee  
Other (describe):  
in that certain tract or parcel of land and premises described as  
Block , Lot , on the tax map of the of , County of ,  
State of New Jersey, for the improvement of which property the  
aforementioned work, services, materials or equipment was  
provided.

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

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

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

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

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

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

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

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

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

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

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

24

25               NOTICE TO SUBCONTRACTOR OR CONTRACTOR:

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

30

31                               Signed

32

33                               For

34       Individual, Firm or Corporation

35               Date:

36

37               CLAIMANT'S REPRESENTATION AND VERIFICATION

38       Claimant represents and verifies that:

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

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

45       3. This claim has been filed within 90 days from the last date  
46 upon which the work, services, materials or equipment for which  
47 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, community association, contractor or subcontractor), this claimant performed the following work or provided the following services, material or equipment:

a. \_\_\_\_\_

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

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

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

4. The amount due for work, services, material or equipment delivery provided by claimant in connection with the improvement of

the real property, and upon which this lien claim is based, is calculated as follows:

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

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

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

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

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

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

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

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

#### NOTICE OF UNPAID BALANCE AND ARBITRATION

##### AWARD

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

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

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

#### CLAIMANT'S REPRESENTATION AND VERIFICATION

Claimant represents and verifies under oath that:

1. I have authority to file this claim.

2. The claimant is entitled to the amount claimed at the date of lodging for record of the claim, pursuant to claimant's contract 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 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 claimant signed, sealed and delivered same as claimant's act and deed, for the purposes herein expressed.

NOTARY PUBLIC

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

23 (3) liquidated damages;

24 (4) collusive payments;

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

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

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

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

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

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

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

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

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

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

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

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

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

2. This construction lien claim was claimed against the interest of (*name*) as [(check one)] (*circle one*):  
 [Owner Lessee Other] owner, unit owner, community association or other party; (if "other," describe: \_\_\_\_\_) 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, for the improvement of which property the aforementioned work, services,

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

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

13 4. Amendments to the original claim were recorded in the  
14 office of the County Clerk on \_\_\_\_\_, **【19】** 20 as No. \_\_\_\_\_ in  
15 Book No. \_\_\_\_\_, Page \_\_\_\_\_. (Complete if applicable)

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

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

- 22 a.  
23 b.  
24 c. \_\_\_\_\_ (etc.)

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

27 8. The reason for this amendment is \_\_\_\_\_  
28

29 CLAIMANTS REPRESENTATION AND VERIFICATION

30  
31 (A-4319 for lien claim)  
32

33 NOTICE TO OWNER OF REAL PROPERTY

34  
35 (Same as for lien claim)  
36

37 NOTICE TO SUBCONTRACTOR OR CONTRACTOR

38  
39 (Same as for lien claim)  
40

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

42 **(Same as for lien claim)】**

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

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

47 12. Upon receipt of notice of a lien claim, the owner, or  
48 community association in accordance with section 3 of P.L.1993,

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

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

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

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

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

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

43 (3) upon the affected lien claim or amended lien claim **relative**  
44 **thereto** , the date of the filing of the Notice of Lis Pendens  
45 pertaining to the real property subject to the lien claim.

46 c. The failure of the clerk to cause a marginal notation to be  
47 made in accordance with subsection b. of this section shall not

1 affect the validity, priority or enforceability of any document filed  
2 pursuant to this act.

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

12 **[d.] e.** Each county clerk shall charge **[the following]** fees for  
13 the filing and marginal notation of the documents authorized to be  
14 filed by this act<sup>1</sup>:

15 Each Notice of Unpaid Balance and Right to File Lien or Amended	
16 Notice of Unpaid Balance and Right to File Lien.....	\$ 4.50
17 Each lien claim or amended lien claim.....	\$ 4.50
18 Each discharge, subordination or release of lien claim or release of	
19 Notice of Unpaid Balance and Right to File .....	\$ 2.00
20 Each marginal notation .....	\$ 1.00 <sup>2</sup>

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

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

23

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

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

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

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

40 b. Any lien claimant who forfeits a lien pursuant to **[subsection**  
41 **a. of]** this section and fails to discharge that lien of record in  
42 accordance with section 30 of **[this act]** P.L.1993, c.318  
43 (C.2A:44A-30), shall be liable for all court costs, and reasonable  
44 legal expenses, including , but not limited to, attorneys' fees,  
45 incurred by the owner, **[the]** community association, contractor, or  
46 subcontractor, or the total costs and legal expenses of all or any

1 combination of them, in defending or causing the discharge of the  
2 lien claim. The court **【may】** shall, in addition, enter judgment  
3 against the claimant who fails to discharge the lien for damages to  
4 any of the parties adversely affected by the lien claim.

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

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

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

16  
17 12. Section 15 of P.L.1993, c.318 (C.2A:44A-15) is amended to  
18 read as follows:

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

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

42 c. If a lien claim is forfeited pursuant to this section, or section  
43 14 of **【this act】** P.L.1993, c.318 (C.2A:44A-14), nothing herein  
44 shall be construed to bar the filing of a subsequent lien claim,  
45 provided, however, any subsequent lien claim shall not include a  
46 claim for the work, services, equipment or material claimed within  
47 the forfeited lien claim.

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

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

5  
6       13. Section 18 of P.L.1993, c.318 (C.2A:44A-18) is amended to  
7 read as follows:

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

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

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

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

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

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

42  
43       14. Section 20 of P.L.1993, c.318 (C.2A:44A-20) is amended to  
44 read as follows:

45       20. a. All valid liens filed pursuant to this act shall attach to the  
46 interest of the owner from the time of filing of the lien claim **[in the**  
47 **office of the county clerk]**, subject to **[the provisions of section 10**



1 of this act] this section and sections 3, 6, and 10 of P.L.1993, c.318  
2 (C.2A:44A-3, 2A:44A-6 and 2A:44A-10).

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

6 b. A lien claim validly filed under this act shall have priority  
7 over [any] a prior [creation,] conveyance, lease or mortgage of an  
8 [estate or] interest in real property to which improvements have  
9 been made, only if [the claimant has filed with the county clerk  
10 prior to that creation, conveyance, lease or mortgage,] a Notice of  
11 Unpaid Balance and Right to File Lien is filed before the recording  
12 or lodging for record of a recordable document evidencing that  
13 conveyance, lease or mortgage. The Notice of Unpaid Balance and  
14 Right to File Lien shall be filed in substantially the following form:  
15

16 [TO THE CLERK, COUNTY OF :  
17

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

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

28 a.

29 b.

30 c. (etc.)

31 2. The amount due for work, services, materials or equipment  
32 provided by claimant in connection with the improvement of the  
33 real property, and upon which this lien claim is based is as follows:  
34

35 Total contract amount: \$

36

37 Amendments to contract: \$

38

39 Total contract amount and amendments to contract: \$

40

41 Less: Agreed upon credits: \$

42 Contract amount paid to date: \$

43

44 Amendments to contract amount paid to date: \$

45

46 TOTAL REDUCTIONS FROM CONTRACT AMOUNT AND  
47 AMENDMENTS TO CONTRACT: \$

1 TOTAL LIEN CLAIM AMOUNT: \$

2

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

5

6 Owner

7

8 Lessee

9

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

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

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

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

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

34

35 CLAIMANT'S REPRESENTATION AND VERIFICATION

36

37 Claimant represents and verifies that:

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

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

46 3. The Notice of Unpaid Balance and Right to File Lien has  
47 been filed within 90 days from the last date upon which the work,

1 services, materials or equipment for which payment is claimed was  
2 provided.

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

5 Name of Claimant  
6 Signed  
7 Type or Print Name and Title  
8 Date:  
9

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

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

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

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

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

41 g. A Notice of Unpaid Balance and Right to File Lien may be  
42 amended by the filing of an Amended Notice of Unpaid Balance  
43 and Right to File Lien in accordance with the provisions of this  
44 section.】

45  
46 TO THE CLERK, COUNTY OF \_\_\_\_\_:

1            NOTICE OF UNPAID BALANCE AND RIGHT TO FILE  
2 LIEN

3  
4        In accordance with the "Construction Lien Law," P.L.1993,  
5 c.318 (C.2A:44A-1 et al.), notice is hereby given that:

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

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

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

35 a. \_\_\_\_\_  
36 b. \_\_\_\_\_  
37 c. \_\_\_\_\_ etc.

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

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

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

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

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

28       CLAIMANT'S REPRESENTATION AND VERIFICATION  
29

30       Claimant represents and verifies that:  
31

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

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

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

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

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

46       **[c.] d.** After the filing of a Notice of Unpaid Balance and Right to  
47       File Lien, any person claiming title to or an **[estate or]** interest in or a

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

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

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

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

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

32

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

35 21. a. The Legislature finds that the ability to sell and purchase  
36 residential housing is essential for the preservation and  
37 enhancement of the economy of the State of New Jersey and that  
38 while there exists a need to provide contractors, subcontractors and  
39 suppliers with statutory benefits to enhance the collection of money  
40 for goods, services and materials provided for the construction of  
41 residential housing in the State of New Jersey, the ability to have a  
42 stable marketplace in which families can acquire homes without  
43 undue delay and uncertainty and the corresponding need of lending  
44 institutions in the State of New Jersey to conduct their business in a  
45 stable environment and to lend money for the purchase or finance of  
46 home construction or renovations requires that certain statutory

1 provisions as related to the lien benefits accorded to contractors,  
2 subcontractors and suppliers be modified. The Legislature further  
3 finds that the construction of residential housing generally involves  
4 numerous subcontractors and suppliers to complete one unit of  
5 housing and that the multiplicity of lien claims and potential for  
6 minor monetary disputes poses a serious impediment to the ability  
7 to transfer title to residential real estate expeditiously. The  
8 Legislature further finds that the purchase of a home is generally  
9 one of the largest expenditures that a family or person will make  
10 and that there are a multitude of other State and federal statutes and  
11 regulations, including "The New Home Warranty and Builders'  
12 Registration Act," P.L.1977, c.467 (C.46:3B-1 et seq.) and "The  
13 Planned Real Estate Development Full Disclosure Act," P.L.1977,  
14 c.419 (C.45:22A-21 et seq.), which afford protection to consumers  
15 in the purchase and finance of their homes, thereby necessitating a  
16 different treatment of residential real estate as it relates to the rights  
17 of contractors, suppliers and subcontractors to place liens on  
18 residential real estate. The Legislature declares that separate  
19 provisions concerning residential construction will provide a system  
20 for balancing the competing interests of protecting consumers in the  
21 purchase of homes and the contract rights of contractors, suppliers  
22 and subcontractors to obtain payment for goods and services  
23 provided.

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

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

36 (2) Upon [the filing of] its lodging for record, a Notice of  
37 Unpaid Balance and Right to File Lien, [service of the Notice of  
38 Unpaid Balance and Right to File Lien] shall be [effected] served  
39 in accordance with the provisions [of] for the service of lien claims  
40 in section 7 of [this act] P.L.1993, c.318 (C.2A:44A-7).

41 (3) Unless the parties have otherwise agreed in writing to an  
42 alternative dispute resolution mechanism, [simultaneously with the  
43 service under paragraph (2) of this subsection] within 10 days from  
44 the date the Notice of Unpaid Balance and Right to File Lien is  
45 lodged for record, the lien claimant shall also serve a demand for  
46 arbitration and fulfill all the requirements and procedures of the  
47 American Arbitration Association to institute an expedited



1 proceeding before a single arbitrator designated by the American  
2 Arbitration Association. The demand for arbitration may be served  
3 in accordance with the provisions for the service of lien claims in  
4 section 7 of P.L.1993, c.318 (C.2A:44A-7) along with: (a) a copy of  
5 the completed and signed Notice of Unpaid Balance and Right to  
6 File Lien; and (b) proof by affidavit that the Notice of Unpaid  
7 Balance and Right to File Lien has been lodged for record.

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

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

28 (4) Upon the closing of all hearings in the arbitration, the arbitrator  
29 shall make the following determinations: (a) whether the Notice of  
30 Unpaid Balance and Right to File Lien was in compliance with section  
31 20 of **[this act]** P.L.1993, c.318 (C.2A:44A-20) and whether service  
32 was proper under section 7 of **[this act]** P.L.1993, c.318 (C.2A:44A-  
33 7); (b) the earned amount of the contract between the owner and the  
34 contractor in accordance with section 9 of P.L.1993, c.318 (C.2A:44A-  
35 9); (c) the validity and amount of any lien claim which may be filed  
36 pursuant to the Notice of Unpaid Balance and Right to File Lien; **[(c)]**  
37 (d) the validity and amount of any liquidated or unliquidated setoffs or  
38 counterclaims to any lien claim which may be filed; and **[d]** (e) the  
39 allocation of costs of the arbitration among the parties. When making  
40 the above determination, the arbitrator shall also consider all  
41 determinations made by that arbitrator in any earlier arbitration  
42 proceeding pertaining to the same residential construction.

43 (5) **[In the event]** If the amount of any setoffs or counterclaims  
44 presented in the arbitration **[are unliquidated and]** cannot be  
45 determined by the arbitrator in a liquidated amount, the arbitrator,  
46 as a condition precedent to the filing of the lien claim, shall order  
47 the lien claimant to post a bond, letter of credit or funds with an

1 attorney-at-law of New Jersey, or other such person or entity as  
2 may be ordered by the arbitrator in such amount as the arbitrator  
3 shall determine to be 110% of the approximate fair and reasonable  
4 value of such setoffs or counterclaims, but in no event **[shall the**  
5 **bond, letter of credit or funds exceed]** greater than the amount of  
6 the lien claim which may be filed. This 110% limitation  
7 **[regarding]** for any bond, letter of credit or funds shall also apply  
8 to any alternative dispute resolution mechanism to which the parties  
9 may agree. When making the above determinations, the arbitrator  
10 shall consider all determinations made by that arbitrator in any  
11 earlier arbitration proceeding pertaining to the same residential  
12 construction.

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

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

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

45 (9) Except for the arbitrator's determination itself, any such  
46 determination shall not be considered final in any legal action or  
47 proceeding, and shall not be used for purposes of collateral

1 estoppel, res judicata, or law of the case to the extent applicable.  
2 Any finding of the arbitrator pursuant to [the provisions of] this act  
3 shall not be admissible for any purpose in any other action or  
4 proceeding.

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

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

38 (12) Solely for those lien claims arising from a residential  
39 construction contract, if a Notice of Unpaid Balance and Right to  
40 File Lien is determined to be without basis, the amount of the  
41 Notice of Unpaid Balance and Right to File Lien is significantly  
42 overstated, or the Notice of Unpaid Balance and Right to File Lien  
43 is not **[filed]** lodged for record: (a) in substantially the form, **[or]**  
44 (b) in the manner, or (c) at a time **[not]** in accordance with **[the**  
45 **provisions of]** this act, then the claimant shall be liable for all  
46 damages suffered by the owner or any other party adversely  
47 affected by the Notice of Unpaid Balance and Right to File Lien,

1 including all court costs, reasonable attorneys' fees and legal  
2 expenses incurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

22       **[f. Payment] (6)** The payment to the owner of that portion of the  
23 purchase price of the real property on which the improvements are  
24 made or to be made which have previously been paid by the owner,  
25 exclusive of any interest or any other carrying costs of such real  
26 property, provided, however, that at the time of the payment of such  
27 funds to the owner, the budget upon which the loan was made  
28 indicated that the amount of the loan is not less than the total of:  
29 **[(1)] (a)** the purchase price of the real property, **[(2)] (b)** the cost  
30 of constructing the improvements, and **[(3)] (c)** any cost listed in  
31 **[subsections c., d. and e.] paragraphs (3), (4), and (5) of subsection**  
32 **b. of this section; or**

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

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

42  
43       17. Section 23 of P.L.1993, c.318 (C.2A:44A-23) is amended to  
44 read as follows:

45       23. a. The amount due a lien claimant shall be paid only after the  
46 lien claim has been established by judgment, or, in the case of an  
47 execution sale, only to those lien claimants whose lien claims were

1 filed before application was made to the court for distribution of the  
2 sale proceeds. All lien claims established by judgment are valid  
3 claims that shall be concurrent and shall be paid [pro rata out of the  
4 lien fund and the proceeds of the sale authorized by this act] as  
5 provided in subsection c. of this section.

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

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

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

20 (2) From the allocation to each first tier lien claimant, amounts  
21 shall be allocated equal to the valid claims of second tier lien claimants  
22 whose claims derive from contracts with that first tier lien claimant. If  
23 the total of the claims is less than the allocation to that first tier lien  
24 claimant, the first tier lien claimant shall be paid the balance. If the  
25 total of the claims exceeds the allocation to that first tier lien claimant,  
26 the second tier claimants' allocations shall be reduced pro rata so as  
27 not to exceed that first tier lien claimant allocation;

28 (3) From the allocation to each second tier lien claimant, amounts  
29 shall be allocated equal to the valid claims of third tier lien claimants  
30 whose claims derive from contracts with that second tier lien claimant.  
31 If the total of the claims is less than the allocation to that second tier  
32 claimant, the second tier lien claimant shall be paid the balance. If the  
33 total of the claims exceeds the allocation to that second tier lien  
34 claimant, the allocation to the third tier lien claimants shall be reduced  
35 pro rata so as not to exceed that second tier lien claimant allocation;

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

43 (5) If there are no first or second tier lien claimants, the lien fund  
44 for third tier lien claimants shall be allocated in amounts equal to that  
45 third tier's valid claims. If the total of the claims of any group of third  
46 tier lien claimants exceeds the lien fund for that group of claimants as  
47 provided by section 9 of P.L.1993, c.318 (C.2A:44A-9), the

1 allocations shall be reduced pro rata so as not to exceed that lien fund.  
2 (cf: P.L.1993, c.318, s.23)

3  
4 18. (New section) a. Subject to the requirements of section 14 of  
5 P.L.1993, c.318 (C.2A:44A-14), and in the case of lien claims arising  
6 from residential construction contracts the additional requirements of  
7 sections 20 and 21 of P.L.1993, c.318 (C.2A:44A-20 and 2A:44A-21),  
8 a lien claim arising under P.L.1993, c.318 (C.2A:44A-1 et al.) shall be  
9 enforced by a suit commenced in the Superior Court within one year of  
10 the date of the last provision of work, services, material or equipment,  
11 payment for which the lien claim was filed. Venue shall be laid in the  
12 county in which the real property affected by the lien claim is located.

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

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

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

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

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

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

44 h. A judgment obtained against a community association that is  
45 unpaid may be enforced by assessment against unit owners as they  
46 would be assessed for any other common expense, after reasonable  
47 notice, and in a manner directed by the court. In ordering assessments,  
48 the court shall be guided by the master deed, bylaws or other

1 document governing the association. A judgment shall not be  
2 enforced by the sale of any common elements, common areas or  
3 common buildings or structures of a real property development.

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

9  
10 19. Section 25 of P.L.1993, c.318 (C.2A:44A-25) is amended to  
11 read as follows:

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

18 If both general and special judgments are given, both writs of  
19 execution may issue, separately or combined in one writ, and one of  
20 such writs may issue after the return of the other for the whole  
21 amount recovered or the residue as the case may require **】** in  
22 accordance with the judgment.

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

24  
25 20. Section 30 of P.L.1993, c.318 (C.2A:44A-30) is amended to  
26 read as follows:

27 30. a. When a lien claim has been filed and the claim has been  
28 paid, satisfied or settled by the parties or forfeited by the claimant,  
29 the claimant or **【his】** claimant's successor in interest or **【his】**  
30 attorney shall, within 30 days of payment, satisfaction or settlement,  
31 or within 7 days of demand by any interested party, file with the  
32 county clerk a certificate, duly acknowledged or proved, directing  
33 the county clerk to discharge the lien claim of record, which  
34 certificate shall contain:

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

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

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

39 (4) The location of the property; and

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

42 b. If the claimant shall fail or refuse to file this certificate, as  
43 set forth in subsection a. of this section, then **【upon application by】**  
44 any party in interest **【,** upon notice to the claimant, to be served  
45 upon him in the same manner as provided by section 7 of this act, or  
46 upon satisfactory proof that the claimant cannot be served, any**】**  
47 may proceed in a summary manner by filing an order to show cause



1 in accordance with the Rules of Court adopted by the Supreme  
2 Court of New Jersey. A judge of the Superior Court may, upon  
3 good cause being shown, and absent receipt of written objections  
4 and grounds for same, order the lien claim discharged on the return  
5 date of the order to show cause. The county clerk shall thereupon  
6 attach the certificate or order to the original notice of lien claim on  
7 file and shall note on the record thereof "discharged by certificate"  
8 or "discharged by court order," as the case may be and any lien  
9 foreclosure action shall be dismissed with prejudice.

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

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

23  
24 OWNER (OR COMMUNITY ASSOCIATION) AFFIDAVIT OF  
25 PAYMENT TO DISCHARGE LIEN CLAIM

26  
27 TO THE CLERK, COUNTY OF  
28

29 The undersigned, being duly sworn upon the undersigned's oath,  
30 avers as follows:  
31

32 1. I am an owner of real property located at (address of  
33 property subject to lien), in that certain tract or parcel of land and  
34 premises described as Block \_\_\_\_\_, Lot \_\_\_\_\_, on the tax map of the  
35 (municipality) of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey  
36 (In the case of a community association, I am an  
37 [officer/manager/agent] of the community association, [name of  
38 community association] for property located at [location of property  
39 development].)

40 2. On or about (date), I caused to be sent to (name of contractor  
41 or subcontractor to whom payment was made), located at (address  
42 designated for payment by the filed lien claim form), the final  
43 payment in the amount of (\$ \_\_\_\_\_) in full satisfaction of a certain  
44 lien claim dated (date) which was filed by (name of lien claimant)  
45 against the real property designated in paragraph 1, on (date) in the  
46 office of the county clerk of the County of (name of county) in  
47 Construction Lien Book \_\_\_\_\_, Page \_\_\_\_\_.

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

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

Name of Owner/Community Association

Signed \_\_\_\_\_

(Type or Print Name and Title)

NOTARIAL FOR INDIVIDUAL OWNER

STATE OF NEW JERSEY

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

1 virtue of its Bylaws, or Resolution of its Board of Directors (or  
2 partnership or operating agreement) executed the within instrument  
3 on its behalf, and thereupon acknowledged that the  
4 owner/community association signed, sealed and delivered same as  
5 owner's/community association's act and deed, for the purposes  
6 herein expressed.

---

8 NOTARY PUBLIC

9  
10 **[c.] e.** Any lien claimant who fails to discharge a lien claim of  
11 record pursuant to this section shall be liable for all court costs, and  
12 reasonable legal expenses, including , but not limited to, attorneys'  
13 fees, incurred by the owner, community association, the contractor,  
14 or subcontractor, or any combination of owner, community  
15 association, contractor and subcontractor, as applicable, to  
16 discharge or obtain the discharge of the lien, and in addition thereto,  
17 the court **[may]** shall enter judgment against the claimant for  
18 damages to any or all of the parties adversely affected by the failure  
19 to discharge the lien.

20 **f.** Upon discharge of record in all cases, the party who filed the  
21 enforcement action shall cause the Notice of Lis Pendens to be  
22 cancelled or discharged of record pursuant to N.J.S.2A:15-6 et seq.  
23 Any party who filed the enforcement action who fails to cancel or  
24 discharge the lis pendens of record pursuant to this section shall be  
25 liable for all court costs, and reasonable legal expenses, including but  
26 not limited to, attorneys' fees, incurred by the owner, community  
27 association, the contractor, or subcontractor, or any other interested  
28 party, or any combination thereof, as applicable, to obtain the  
29 cancellation or discharge of the lis pendens, and in addition thereto,  
30 the court shall enter judgment against the claimant for damages to any  
31 or all of the parties adversely affected by the failure to cancel or  
32 discharge the lis pendens.

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

34  
35 21. Section 31 of P.L.1993, c.318 (C.2A:44A-31) is amended to  
36 read as follows:

37 31. **a.** When a lien claim is filed against any improvement and  
38 land under this act, the owner, community association in accordance  
39 with section 3 of P.L.1993, c.318 (C.2A:44A-3), contractor or  
40 subcontractor may execute and file with the proper county clerk a  
41 bond in favor of the lien claimant, with a surety company, duly  
42 authorized to transact business in this State, as surety thereon **[, in an]**  
43 amount equal to 110% of the amount claimed by the lien claimant  
44 **[and a].** The amount of the bond shall be equal to 110% of the amount  
45 claimed by the lien claimant [and a] but in the case of a lien claim  
46 arising from a residential construction contract, no greater than the  
47 earned amount of the contract between the owner and the contractor as

determined by the arbitrator in accordance with paragraph (4) of subsection b. of section 21 of P.L.1993, c.318 (C.2A:44A-21). The bond shall be filed in accordance with the language set forth in subsection d. of this section, along with payment in the amount of \$25, conditioned upon the payment of any judgment and costs that may be recovered by the lien claimant under this claim. Any form of bond proffered that contains language inconsistent with the language set forth in subsection d. of this section shall be the basis for a cause of action to strike such language from the form of bond.

b. As an alternative, the owner, community association, contractor or subcontractor may deposit with the clerk of the Superior Court of New Jersey, funds constituting an amount equal to 110% of the amount claimed by the lien claimant [and a] <sup>1</sup>, but in the case of a lien claim arising from a residential construction contract, no greater than the earned amount of the contract between the owner and the contractor as determined by the arbitrator in accordance with paragraph (4) of subsection b. of section 21 of P.L.1993, c.318 (C.2A:44A-21). The deposit shall be made<sup>1</sup> along with payment in the amount of \$25, conditioned upon the payment of any judgment and costs that may be recovered by the lien claimant under this claim. The deposit may be made without the necessity of commencing any legal action. The written receipt provided by the court clerk for the deposit made may be filed with 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 <sup>1</sup>[(3)]<sup>1</sup> (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

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

13  
 14 WHEREAS, in accordance with the "Construction Lien Law,"  
 15 P.L.1993, c.318 (C.2A:44A-1 et al.), the Principal is permitted to  
 16 file a bond for 110% of the lien amount, which would be a total  
 17 bond penalty of (amount written out) (\$ ) (hereinafter "Penal  
 18 Sum").

19  
 20 NOW THEREFORE, in consideration of the discharge of said lien  
 21 by the Clerk, the Principal and (name of bond company) as surety,  
 22 having an office at (address of bond company) and authorized to do  
 23 business as a surety, do hereby pursuant to the statute provided, in  
 24 such case made and jointly and severally undertake and become  
 25 bound to the Clerk in an amount not exceeding the Penal Sum, (\$ )  
 26 conditioned for the payment of any and all judgments that may be  
 27 rendered against said property in favor of the Lienor, its successors  
 28 or assigns, in any action or proceedings to enforce the alleged lien  
 29 as described.

30  
 31 Sealed with our seal and dated the day of (month), (year)

32  
 33 Witness:\_\_\_\_\_ (Name of principal)  
 34 By:(Signature)  
 35 Title:(Printed name and title)  
 36 Witness:\_\_\_\_\_ (Name of Bond Company)  
 37 By: (Signature)  
 38 Title:(Printed name and  
 39 title of signatory)

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

41  
 42 22. Section 33 of P.L.1993, c.318 (C.2A:44A-33) is amended to  
 43 read as follows:

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

46 (1) Upon the execution and filing with the county clerk of a  
 47 surety bond, or the deposit of funds with the clerk of the Superior

1 Court of New Jersey, in favor of the claimant in an amount equal to  
2 110% of the amount of the lien claim; or

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

6 (3) Pursuant to the filing of an owner's or community association's  
7 discharge certificate in accordance with section 30 of P.L.1993, c.318  
8 (C.2A:44A-30), provided that 90 days prior to the filing of the  
9 affidavit, substantially in the form set forth in section 30 of P.L.1993,  
10 c.318 (C.2A:44A-30), the lien claimant is notified by certified mail at  
11 the lien claimant's last known address of the owner's or community  
12 association's intent to file a discharge certificate and no written  
13 communication from the lien claimant denying or disputing payment  
14 in full of the lien claim is filed with the county clerk and served on the  
15 owner or community association; or

16 **[(3)]** (4) Pursuant to an order of discharge by the court.

17 b. When judgment of dismissal or final other judgment against  
18 the lien claimant is entered in an action to enforce the lien claim  
19 under this act and no appeal is taken within the time allowed for an  
20 appeal, or if an appeal is taken within the time allowed for an  
21 appeal, or if an appeal is taken and finally determined against the  
22 lien claimant, the court before which the judgment was rendered,  
23 upon application and written notice to the lien claimant as the court  
24 shall direct, shall order the county clerk to enter a discharge of the  
25 lien claim.

26 c. If an appeal is taken by the claimant, the claim shall be  
27 discharged unless the claimant posts a bond, in an amount to be  
28 determined by the court, to protect the owner or community  
29 association from the reasonable costs, expenses and damages which  
30 may be incurred by virtue of the continuance of the lien claim  
31 encumbrance.

32 d. Upon discharge of record of the lien claim, unless the action  
33 for enforcement also involves claims, by way of counterclaim, cross  
34 claim or interpleader, arising out of or related to the improvements that  
35 are the subject of the lien claim in which the owner or community  
36 association is an interested party, the court shall also order that the  
37 owner or community association no longer be a party to an action to  
38 enforce the lien claim, and the surety issuing the bond shall be added  
39 as a necessary party.

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

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

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

47 35. A discharge, subordination or release of a lien claim or  
48 Notice of Unpaid Balance and Right to File Lien shall be duly

1 acknowledged or proved, and recorded in a properly indexed book  
2 for that purpose. A notation of the record of the discharge of a lien  
3 claim or Notice of Unpaid Balance and Right to File Lien shall be  
4 endorsed upon the margin of the record in the book where the  
5 original lien or Notice of Unpaid Balance and Right to File Lien is  
6 recorded stating that the discharge is filed **[and recorded]**, giving  
7 the date of filing **[and recording]** and setting forth the book and the  
8 page number where the discharge, or receipt of payment of the lien  
9 or order or owner's or community association's discharge  
10 certificate discharging the lien, is recorded.  
11 (cf: P.L.1993, c.318, s.35)

12  
13 24. Section 37 of P.L.1993, c.318 (C.2A:44A-37) is amended to  
14 read as follows:

15 37. a. If required in a contract or upon written request from an  
16 owner or community association to a contractor, a subcontractor, or  
17 both, the contractor or subcontractor shall, within 10 days, provide  
18 the owner or community association with an accurate and full list of  
19 the names and addresses of each subcontractor and supplier who  
20 may have a right to file a lien pursuant to **[the provisions of]** this  
21 act.

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

27 c. Any list provided pursuant to **[the provisions of]** subsection  
28 a. or b. of this section shall be verified under oath by the person  
29 providing same.

30 d. Reliance upon the verified list **[by the person requesting**  
31 **same or by the owner]** shall be prima facie evidence establishing  
32 the bona fides of payment made in reliance thereon and shall  
33 constitute an absolute defense to any claim that the party making  
34 such payment should have made additional inquiry to determine the  
35 identity of potential claimants.

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

46  
47 25. The following sections are repealed:

- 1      Section 16 of P.L.1993, c.318 (C.2A:44A-16);
- 2      Section 19 of P.L.1993, c.318 (C.2A:44A-19);
- 3      Section 24 of P.L.1993, c.318 (C.24:44A-24);
- 4      Section 26 of P.L.1993, c.318 (C.2A:44A-26);
- 5      Section 28 of P.L.1993, c.318 (C.2A:44A-28); and
- 6      Section 29 of P.L.1993, c.318 (C.2A:44A-29).
- 7
- 8      26. This act shall take effect immediately.