

## New Jersey

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### Statutory Outline

#### TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE.

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**2A:44A-1. Short title.**

1. This act shall be known and may be cited as the "Construction Lien Law."

**2A:44A-2. Definitions relative to construction liens.**

2. As used in this act:

"**Claimant**" means a person having the right to file a lien claim on real property pursuant to this act.

"**Community association**" means a condominium association, a homeowners' association, a cooperative association, or any other entity created to administer or manage the common elements and facilities of a real property development that, directly or through an authorized agent, enters into a contract for improvement of the real property.

"**Contract**" means any agreement, or amendment thereto, in writing, signed by the party against whom the lien claim is asserted and evidencing the respective responsibilities of the contracting parties, including, but not limited to, price or other consideration to be paid, and a description of the benefit or improvement to the real property subject to a lien. In the case of a supplier, "**contract**" shall include a delivery or order slip referring to the site or project to which materials have been delivered or where they were used and signed by the party against whom the lien claim is asserted or that party's authorized agent. As referenced herein: the phrase "**party against whom the lien claim is asserted**" means the party in direct privity of contract with the party asserting the lien claim; and the term "**signed**" means a writing that bears a mark or symbol intended to authenticate it.

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

"**Contractor**" means any person in direct privity of contract with the owner of real property, or with a community association in accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), for improvements to the real property. A construction manager who enters into a single contract with an owner or a community association for the performance of all construction work within the scope of a construction manager's contract, a construction manager who enters into a subcontract, or a construction manager who is designated as an owner's or community association's agent without entering into a subcontract is also a "**contractor**" for purposes of this act. A licensed architect, engineer or land surveyor or certified landscape architect who is not a salaried employee of the contractor, or the owner or community association, performing professional services related to the improvement of property in direct contract with the property owner shall be considered a "**contractor**" for the purposes of this act.

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

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

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

"**Equipment**" means any machinery or other apparatus, including rental equipment delivered to the site to be improved or used on the site to be improved, whether for incorporation in the improved real property or for use in the construction of the improvement of the real property. A lien for equipment shall arise only for equipment used on site for the improvement of real property, including equipment installed in the improved real property. In the case of rental equipment, the amount of any lien shall be limited to the rental rates as set forth in the rental contract.

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

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

**"Improvement"** means any actual or proposed physical changes to real property resulting from the provision of work, services, or material by a contractor, subcontractor, or supplier pursuant to a contract, whether or not such physical change is undertaken, and includes the construction, reconstruction, alteration, repair, renovation, demolition or removal of any building or structure, any addition to a building or structure, or any construction or fixture necessary or appurtenant to a building or structure for use in conjunction therewith. **"Improvement"** includes, but is not limited to, excavation, digging, drilling, drainage, dredging, filling, irrigation, land clearance, grading or landscaping. **"Improvement"** shall not include the mining of minerals or removal of timber, gravel, soil, or sod which is not integral to or necessitated by the improvement to real property. **"Improvement"** shall not include public works or improvements to real property contracted for and awarded by a public entity. Any work or services requiring a license for performance including, but not limited to, architectural, engineering, plumbing or electrical construction, shall not constitute an improvement unless performed by a licensed claimant.

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

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

**"Lien claim"** means a claim, by a claimant, for money for the value of work, services, material or equipment furnished in accordance with a contract and based upon the contract price and any amendments thereto, that has been secured by a lien pursuant to this act. The term **"value"** includes retainage earned against work, services, materials or equipment furnished.

**"Lien fund"** means the pool of money from which one or more lien claims may be paid. The amount of the lien fund shall not exceed the maximum amount for which an owner can be liable. The amount of the lien that attaches to the owner's interest in the real property cannot exceed the lien fund.

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

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

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

**"Owner"** or **"owner of real property"** shall not include a **"community association"** that holds record title to real property or has an interest in real property.

**"Person"** means an individual, corporation, company, association, society, firm, limited liability company, limited liability partnership, partnership, joint stock company or any other legal entity, unless restricted by the context to one or more of the above.

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

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

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

**"Residential construction contract"** means a contract for the construction of, or improvement to, a dwelling, or dwellings or any portion thereof, or a residential unit, or units, or dwellings, or any portion thereof in a real property development.

**"Residential purchase agreement"** means a contract between a buyer and a seller for the purchase of a dwelling, or dwellings or a residential unit or units in a real property development.

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

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

**"Services"** means professional services performed by a licensed architect, engineer, land surveyor, or certified landscape architect, who is not a salaried employee of the contractor, a subcontractor or the owner and who is in direct privity of contract with the owner for the preparation of plans, documents, studies, or the provision of other services by a licensed architect, engineer or land surveyor prepared in connection with improvement to real property, whether or not such improvement is undertaken.

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

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

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

**"Third tier lien claimant"** means a claimant who is a subcontractor to a second tier lien claimant or a supplier to a second tier lien claimant.

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

### **2A:44A-3. Lien entitlement for work, services, etc.; terms defined.**

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

b. For purposes of this section:

(1) **"interest of the owner of the real property development"** includes interest in any residential or nonresidential units not yet sold or transferred and the proportionate undivided interests in the common elements attributable to those units;

(2) **"interest of the unit owner"** includes the proportionate undivided interests in the common elements of the real property development;

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

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

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

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

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

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

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

(1) has expressly authorized the contract for improvement in writing signed by the person against whom the lien claim is asserted, which writing provides that the person's interest is subject to a lien for this improvement;

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

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

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

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

h. Nothing in this act shall be construed to limit the right of any claimant from pursuing any other remedy provided by law.

#### **2A:44A-4. Lien for improvements; attachment.**

4. Liens for the following improvements shall attach to real property only in the manner herein prescribed. In the case of an improvement:

a. Involving a dock, wharf, pier, bulkhead, return, jetty, piling, groin, boardwalk or pipeline above, on or below lands under waters within the State's jurisdiction, the lien shall be on the improvements together with the contracting owner's interest in the lots of land in front of or upon which the improvements are constructed and any interest of the contracting owner of the land in the land or waters in front of the land;

b. Involving removal of a building or structure or part of a building or structure from its situs and its relocation on other land, the lien shall be on the contracting owner's interest in the improved real property on which the building or structure has been relocated;

c. Involving excavation, drainage, dredging, landfill, irrigation work, construction of banks, making of channels, grading, filling, landscaping or the planting of any shrubs, trees or other nursery products, the lien shall be on the land to which the improvements are made, and shall not be upon the adjoining lands directly or indirectly benefited from the improvements.

#### **2A:44A-5. Liens, certain; prohibited.**

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

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

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

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

**2A:44A-6. Filing lien claim.**

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

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

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

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

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

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

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

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

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

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

**2A:44A-7. Serving of lien claim by claimant.**

7. a. Within 10 days following the lodging for record of a lien claim, the claimant shall serve on the owner, or community association in accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), and, if any, the contractor and subcontractor against whom the claim is asserted, a copy of the completed and signed lien claim substantially in the form prescribed by section 8 of P.L.1993, c.318 (C.2A:44A-8) and marked "received for filing" or a similar stamp with a date and time or other mark indicating the date and time received by the county clerk. Service shall be by personal service as prescribed by the Rules of Court adopted by the Supreme Court of New Jersey or by:

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

(2) ordinary mail addressed to the last known business or residence address of the owner or community association, contractor or subcontractor. A lien claim served upon a community association need not be served upon individual "unit owners" as defined in section 3 of P.L.1993, c.318 (C.2A:44A-3).

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 an owner who has not been properly served, shall constitute prima facie evidence of material prejudice.

**2A:44A-8. Lien claim form.**

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

**CONSTRUCTION LIEN CLAIM**

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, c.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, c.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

NOTICE TO OWNER OF REAL PROPERTY

NOTICE TO CONTRACTOR OR SUBCONTRACTOR, IF APPLICABLE

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

The claimant filing this lien claim shall forfeit all rights to enforce the lien claim and shall be required to discharge the lien claim of record, if the claimant fails to bring an action in the Superior Court, in the county in which the real property is situated, to establish the lien 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 or community association, contractor, or subcontractor against whom a lien claim is filed, as appropriate, requiring the claimant to commence an action to establish the lien claim.

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

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

1. paying the claimant and obtaining a discharge of lien claim from the claimant, by which the owner will lose the right to challenge this lien claim in a legal proceeding before a court of law; or
2. causing the lien claim to be discharged by filing a surety bond or making a deposit of funds as provided for in section 31 of P.L.1993, c.318 (C.2A:44A-31), by which the owner will retain the right to challenge this lien claim in a legal proceeding before a court of law.

**2A:44A-9. Amount of lien claim.**

9. a. The amount of a lien claim shall not exceed the unpaid portion of the contract price of the claimant's contract for the work, services, material or equipment provided.

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

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

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

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

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

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

(3) liquidated damages;

(4) collusive payments;

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

or

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

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

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

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

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

#### **2A:44A-10. Attachment of lien to interest of owner; amount of liability.**

10. Subject to the limitations of sections 3 and 6 of P.L.1993, c.318 (C.2A:44A-3 and 2A:44A-6), the lien shall attach to the interest of the owner from and after the time of filing of the lien claim. Except as provided by section 20 of P.L.1993, c.318 (C.2A:44A-20), no lien shall attach to the interest acquired by a bona fide purchaser as evidenced by a recordable document recorded or lodged for record before the date of filing of the lien claim. A lien claim shall not, except as provided by sections 20 and 22 of P.L.1993, c.318 (C.2A:44A-20 and 2A:44A-22), have a priority over any mortgage, judgment or other lien or interest in real estate first recorded, lodged for record, filed or docketed. A lien claim filed under this act shall be subject to the effect of a Notice of Settlement filed pursuant to P.L.1979, c.406 (C.46:16A-1 et seq.).

#### **2A:44A-11. Amendment of lien claim, form.**

11. a. A lien claim may be amended 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 an original lien claim, including but not limited to the notice requirements of

section 7 of P.L.1993, c.318 (C.2A:44A-7) and shall be subject to the limitations of sections 9 and 10 of P.L.1993, c.318 (C.2A:44A-9 and 2A:44A-10). That portion of the amended lien in excess of the amount previously claimed shall attach as of the date of filing of the 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 (circle one): 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, material or equipment was provided. (If the claim was against a community association in accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), set forth the name of the community association and the name and location of the property development.)
3. This amends a lien claim which was previously lodged for record on \_\_ \_\_\_\_, 20\_\_ and filed with the County Clerk of County on \_\_ \_\_\_\_, 20\_\_ and recorded on \_\_ \_\_\_\_, 20\_\_ as No. in Book No. , Page . A Notice of Unpaid Balance and Right to File Lien (if any) was previously filed with the County Clerk of on \_\_ \_\_\_\_, 20\_\_ and recorded on \_\_ \_\_\_\_, 20\_\_ as No. in Book No. , Page .
4. Amendments to the original claim were recorded in the office of the County Clerk on \_\_ \_\_\_\_, 20\_\_ as No. in Book No. , Page . (Complete if applicable)
5. Effective the date of the lodging for record of this AMENDMENT TO CONSTRUCTION LIEN CLAIM, the value of the lien is claimed to be in the total amount of (\$ ) DOLLARS, inclusive of all prior lien claims or amendments thereof.
6. The work, services, material or equipment provided upon which this Amendment is made are:
  - a.
  - b.
  - c. (etc.)
7. The date of the provision of the last work, services, material or equipment for which payment is claimed is (date).
8. The reason for this amendment is \_\_\_\_\_

CLAIMANTS REPRESENTATION AND VERIFICATION

(Same as for lien claim)

NOTICE TO OWNER OF REAL PROPERTY

(Same as for lien claim)

NOTICE TO SUBCONTRACTOR OR CONTRACTOR

(Same as for lien claim)

**2A:44A-12. Authorized withholding, deductions.**

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

**2A:44A-13 "Construction Lien Book," "Construction Lien Index Book;" fees.**

13. a. The county clerk shall provide a book designated as the "Construction Lien Book" in which shall be entered each Notice of Unpaid Balance and Right to File Lien, Amended Notice of Unpaid Balance and Right to File Lien, lien claim and amended lien claim, and discharge, subordination or release of a lien claim or Notice of Unpaid Balance and Right to File Lien presented for filing pursuant to this act.

b. The county clerk shall cause marginal notations to be made upon each filed document as follows:

(1) upon each Notice of Unpaid Balance and Right to File Lien, the date an amendment to that Notice or discharge thereof, and related lien claim or amendment thereto is filed;

(2) upon each lien claim, the date an amendment thereto is filed; and the date a discharge, subordination or release thereof is filed; and

(3) upon the affected lien claim or amended lien claim, the date of the filing of the Notice of Lis Pendens pertaining to the real property subject to the lien claim.

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

d. The county clerk shall provide and maintain an index book designated as the "Construction Lien Index Book," setting forth alphabetically, and arranged by owners' or community associations' names, and by claimants' names, each Notice of Unpaid Balance and Right to File Lien, Amended Notice of Unpaid Balance and Right to File Lien, lien claim, amended lien claim, discharge, subordination and release of a lien claim or Notice of Unpaid Balance and Right to File Lien.

e. Each county clerk shall charge fees for the filing and marginal notation of the documents authorized to be filed by this act as set forth in N.J.S.22A:2-29.

**2A:44A-14. Claimant's failure to commence action; forfeiture, liability.**

14. a. A claimant filing a lien claim shall forfeit all rights to enforce the lien, and shall immediately discharge the lien of record in accordance with section 30 of P.L.1993, c.318 (C.2A:44A-30), if the claimant fails to commence an action in the Superior Court, in the county in which the real property is situated, to enforce the lien 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, community association, contractor, or subcontractor against whose account a lien claim is filed, requiring the claimant to commence an action to enforce the lien claim.

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

c. (Deleted by amendment, P.L.2010, c.119)

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

**2A:44A-15. Improper lodging of lien claim; forfeiture of rights; liability.**

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

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

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

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

**2A:44A-17. Lien claims unabated by death of party in interest**

17. No lien claim under this act or right thereto shall abate by reason of the death of any party in interest and the right to the lien claim may be asserted by the personal representative of a deceased contractor, subcontractor, or supplier against the personal representative of a deceased owner, contractor or subcontractor.

**2A:44A-18. Calculation of proportionate share under residential construction.**

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

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

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

c. If subsection a. or b. of this section does not apply, then the lien shall not be released as to any portion of the interest in real property.

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

**2A:44A-20. Notice of Unpaid Balance and Right to File Lien, form.**

20. a. All valid liens filed pursuant to this act shall attach to the interest of the owner from the time of filing of

the lien claim, subject to this section and sections 3, 6, and 10 of P.L.1993, c.318 (C.2A:44A-3, 2A:44A-6 and 2A:44A-10).

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

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

NOTICE OF UNPAID BALANCE AND RIGHT TO FILE LIEN

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

1. (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) (Please circle one and fill in name as applicable) located at (Business address of claimant) has on (date) a potential 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, in the amount of (\$\_\_\_\_\_), as calculated below for the value of the work, services, material or equipment provided. (If claim is against a community association in accordance with section 3 of P.L.1993, c.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 to be claimed against the interest of the owner, unit owner, or other party, or against the community association (circle one; if "other", describe: \_\_\_\_\_).

2. The work, services, material 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, community association, contractor, or subcontractor having a direct contractual relation with a contractor, or an authorized agent of any of them), dated \_\_\_\_\_, between (claimant) and owner, unit owner, community association, contractor or subcontractor (circle one), named or known as (name of contracting party) and located at (address of other contracting party), in the total contract amount of (\$ ) together with (if applicable) amendments to the total contract amount aggregating (\$ ).

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

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

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

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

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

5. The amount due for work, services, material or equipment 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 Contract of Work Completed or Services, Material or 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] = \$ \_\_\_\_\_

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

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

CLAIMANT'S REPRESENTATION AND VERIFICATION

Claimant represents and verifies that:

- 1. I have authority to file this Notice of Unpaid Balance and Right to File Lien.
- 2. The claimant is entitled to the amount claimed herein at the date this Notice is lodged for record, pursuant to claimant's contract described in the Notice of Unpaid Balance and Right to File Lien.
- 3. The work, services, material or equipment for which this Notice of Unpaid Balance and Right to File Lien is filed was provided exclusively in connection with the improvement of the real property which is the subject of this Notice of Unpaid Balance and Right to File Lien.
- 4. The Notice of Unpaid Balance and Right to File Lien has been lodged for record within 90 days, or in the case of a residential construction contract within 60 days, from the last date upon which the work, services, material or equipment for which payment is claimed was provided.
- 5. The foregoing statements made by me are true, to the best of my knowledge.

Name of Claimant \_\_\_\_\_  
Signed \_\_\_\_\_

(Type or Print Name and Title)

SUGGESTED NOTARIAL FOR INDIVIDUAL CLAIMANT:

STATE OF NEW JERSEY  
COUNTY OF [ ] ss:

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

\_\_\_\_\_

NOTARY PUBLIC

SUGGESTED NOTARIAL FOR CORPORATE OR LIMITED LIABILITY CLAIMANT:

STATE OF NEW JERSEY  
COUNTY OF [ ] ss:

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

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NOTARY PUBLIC

- c. A claimant electing to file a Notice of Unpaid Balance and Right to File Lien as described above need not serve a copy upon any interested party.
- d. After the filing of a Notice of Unpaid Balance and Right to File Lien, any person claiming title to or an interest in or a lien upon the real property described in the Notice of Unpaid Balance and Right to File Lien, shall be deemed to have acquired said title, interest or lien with knowledge of the anticipated filing of a lien claim, and shall be subject to the terms, conditions and provisions of that lien claim within the period provided by section 6 of P.L.1993, c.318 (C.2A:44A-6) and as set forth in the Notice of Unpaid Balance and Right to File Lien. A Notice of Unpaid Balance and Right to File Lien filed under this act shall be subject to the effect of a Notice of Settlement filed pursuant to P.L.1979, c. 406 (C.46:16A-1 et seq.).
- e. The Notice of Unpaid Balance and Right to File Lien shall be effective for 90 days or in the case of a residential construction contract claim for 120 days from the date of the provision of the last work, services, material or equipment delivery for which payment is claimed as set forth in paragraph 4 of the Notice of Unpaid Balance and Right to File Lien.
- f. The lodging for record or filing of a Notice of Unpaid Balance and Right to File Lien shall not constitute the lodging for record or filing of a lien claim nor does it extend the time for the lodging for record of a lien claim, in accordance with this act.
- g. Failure to file a Notice of Unpaid Balance and Right to File Lien shall not affect the claimant's lien rights arising under this act, to the extent that no conveyance, lease or mortgage of an interest in real property occurs prior to the filing of a Notice of Unpaid Balance and Right to File Lien or lien claim.
- h. A Notice of Unpaid Balance and Right to File Lien may be amended by the filing of an Amended Notice of Unpaid Balance and Right to File Lien in accordance with this section.

**2A:44A-21. Legislative findings, additional requirements for lodging for record of lien on residential construction.**

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



consumers in the purchase of homes and the contract rights of contractors, suppliers and subcontractors to obtain payment for goods and services provided.

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

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

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

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

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

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

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

(5) If the amount of any setoffs or counterclaims presented in the arbitration cannot be determined by the arbitrator in a liquidated amount, the arbitrator, as a condition precedent to the filing of the lien claim, shall order the lien claimant to post a bond, letter of credit or funds with an attorney-at-law of New Jersey, or other such person or entity as may be ordered by the arbitrator in such amount as the arbitrator shall determine to be 110% of the approximate fair and reasonable value of such setoffs or counterclaims, but in no event greater than the amount of the lien claim which may be filed. This 110% limitation for any bond, letter of credit or funds shall also apply to any alternative dispute resolution mechanism to which the parties may agree. When making the above determinations, the arbitrator shall consider all determinations made by that arbitrator in any earlier arbitration proceeding pertaining to the same residential construction.

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

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

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

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

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

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

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

(13) If the aggregate sum of all lien claims attaching to any real property that is the subject of a residential construction contract exceeds the amount due under a residential purchase agreement, less the

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

**2A:44A-22. Priority of mortgages over liens, conditions.**

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

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

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

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

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

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

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

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

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

(6) The payment to the owner of that portion of the purchase price of the real property on which the improvements are made or to be made which have previously been paid by the owner, exclusive of any interest or any other carrying costs of such real property, provided, however, that at the time of the payment of such funds to the owner, the budget upon which the loan was made indicated that the amount of the loan is not less than the total of: (a) the purchase price of the real property, (b) the cost of constructing the improvements, and (c) any cost listed in paragraphs (3), (4), and (5) of subsection b. of this section; or

(7) An escrow in an amount not to exceed 150% of the amount necessary to secure payment of charges described in paragraphs (1), (3), (4) and (5) of subsection b. of this section.

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

**2A:44A-23. Payment of claims, pro rata payment.**

23. a. The amount due a lien claimant shall be paid only after the lien claim has been established by judgment, or, in the case of an execution sale, only to those lien claimants whose lien claims were filed before application was made to the court for distribution of the sale proceeds. All lien claims established by judgment are valid claims that shall be concurrent and shall be paid as provided in subsection c. of this section.

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

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

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

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

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

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

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

**2A:44A-24.1. Lien claims enforced by suit.**

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

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

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

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

- e. A party to a suit to enforce a lien claim shall be entitled to assert any defense available to any other party in contesting the amount for which a claimant seeks to have the lien reduced to judgment.
- f. The judgment to be entered in a suit to enforce a lien claim shall (1) establish the amount due to the lien claimant; and (2) direct the public sale by the sheriff or other such officer as the court may direct of the real property and improvement affected by the lien. The proceeds of the sale shall be distributed in accordance with section 23 of P.L.1993, c.318 (C.2A:44A-23). If funds are realized at the sale in an amount greater than the lien fund, the surplus funds shall be distributed in accordance with law.
- g. Nothing in this act shall bar recovery of money damages pursuant to a lien claim arising under P.L.1993, c.318 (C.2A:44A-1 et al.).
- h. A judgment obtained against a community association that is unpaid may be enforced by assessment against unit owners as they would be assessed for any other common expense, after reasonable notice, and in a manner directed by the court. In ordering assessments, the court shall be guided by the master deed, bylaws or other document governing the association. A judgment shall not be enforced by the sale of any common elements, common areas or common buildings or structures of a real property development.
- i. Upon resolution of the suit other than by the entry of final judgment in favor of the plaintiff in accordance with subsection f. of this section, a cancellation or discharge of lis pendens should be filed, by the party who filed the enforcement action, in the office of the county clerk or register where the notice of lis pendens is filed.

**2A:44A-25. Issuance of writ of execution.**

25. If judgment in an action to enforce a lien claim under this act is entered in favor of the lien claimant, a writ of execution may issue thereon, in accordance with the judgment.

**2A:44A-27. Interest in residential property, priority to all subsequent liens**

27. The interests in real property set forth in section 21 of this act shall have priority to all subsequent liens under this act upon the land and upon the improvements thereon, except such as may be removable as between landlord and tenant, which may be sold and removed by virtue of any lien for the erection, construction or completion of the same, free from the prior encumbrances.

**2A:44A-30. Filing of certificate to discharge lien claim of record.**

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

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

b. If the claimant shall fail or refuse to file this certificate, as set forth in subsection a. of this section, then any party in interest may proceed in a summary manner by filing an order to show cause in accordance with the Rules of Court adopted by the Supreme Court of New Jersey. A judge of the Superior Court may, upon good cause being shown, and absent receipt of written objections and grounds for same, order the lien claim discharged on the return date of the order to show cause. The county clerk shall thereupon attach the certificate or order to the original notice of lien claim on file and shall note on the record thereof "discharged by certificate" or "discharged by court order," as the case may be and any lien foreclosure action shall be dismissed with prejudice.

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

d. In those circumstances in which the lien claim has been paid in full, the lien claimant has failed to file a lien claim discharge pursuant to this section, and at least 13 months have elapsed since the date of the lien claim, the owner or community association may, in accordance with section 33 of P.L.1993, c.318 (C.2A:44A-33) submit

for filing a duly acknowledged discharge certificate substantially in the form provided by subsection a. of this section accompanied by an affidavit setting forth the circumstances of payment as set forth below:

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

TO THE CLERK, COUNTY OF

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

1. I am an owner of real property located at (address 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. (In the case of a community association, I am an (officer/manager/agent) of the community association, (name of community association) for property located at (location of property development).)
2. On or about (date), I caused to be sent to (name of contractor or subcontractor to whom payment was made), located at (address designated for payment by the filed lien claim form), the final payment in the amount of (\$ ) in full satisfaction of a certain lien claim dated (date) which was filed by (name of lien claimant) against the real property designated in paragraph 1, on (date) in the office of the county clerk of the County of (name of county) in 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:

COUNTY OF 9 ( ) ss:

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

\_\_\_\_\_

NOTARY PUBLIC

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

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

**2A:44A-31. Filing of surety bond, deposit.**

31. a. When a lien claim is filed against any improvement and land under this act, the owner, community association in accordance with section 3 of P.L.1993, c.318 (C.2A:44A-3), contractor or subcontractor may execute and file with the proper county clerk a bond in favor of the lien claimant, with a surety company, duly authorized to transact business in this State, as surety thereon in an amount equal to 110% of the amount claimed by the lien claimant. The amount of the bond shall be equal to 110% of the amount claimed by the lien claimant 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 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, 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 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:

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

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

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

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

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

(Name of Bond Company)

(Bond No. ) Bond Amount \$ \_\_\_\_\_

**BOND DISCHARGING CONSTRUCTION LIEN**

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

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

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

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

Witness: \_\_\_\_\_ (Name of principal)

By:(Signature)

Title:(Printed name and title of signatory)



Witness: \_\_\_\_\_

(Name of Bond Company)

By: (Signature)

Title:(Printed name and title of signatory)

**2A:44A-32. Release, discharge from claim**

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

**2A:44A-33. Discharge of record of lien claim.**

33. a. A lien claim shall be discharged of record by the county clerk:

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

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

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

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

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

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

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

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

**2A:44A-34. Book, page number of original record of lien claim necessary for release, discharge**

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

**2A:44A-35. Discharge, subordination, release of lien claim.**

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

**2A:44A-36. Liability for fraud**

36. A person who fraudulently deprives a person entitled to the benefits of this act shall be liable to that person for any damages resulting therefrom.

**2A:44A-37. Furnishing of list of subcontractors, suppliers.**

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

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

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

d. Reliance upon the verified list shall be prima facie evidence establishing the bona fides of payment made in reliance thereon and shall constitute an absolute defense to any claim that the party making such payment should have made additional inquiry to determine the identity of potential claimants.

e. Any person to whom a written request has been made pursuant to subsection a. or b. of this section who does not provide a list in compliance with this section shall be liable in damages to: (1) the party requesting the list; or (2) the owner or community association, including, but not limited to, court costs and the reasonable legal expenses, including attorneys' fees, incurred by any or all of them, in defending or causing the discharge of a lien claim asserted by a party whose name is omitted from the list.

**2A:44A-38. Waivers of construction lien rights**

38. Waivers of construction lien rights are against public policy, unlawful, and void, unless given in consideration for payment for the work, services, materials or equipment provided or to be provided, and such waivers shall be effective only upon and to the extent that such payment is actually received.

**2A:45-1. Liens and encumbrances determinable**

Whenever the state of New Jersey has any lien or encumbrance upon real property and an action arising out of a prior lien or encumbrance on the same real property is instituted to foreclose, strictly foreclose, or re-foreclose the said prior lien or encumbrance, or otherwise to affect the lien or encumbrance of the state, or when such action is brought to foreclose the equity of redemption of the real property after a sale for unpaid taxes or other municipal liens, the lien or encumbrance of the state and its priority may be brought in question and definitely settled by the court having jurisdiction of the matter.

**2A:45-2. Notice; contents**

In any such action, a notice shall be directed to the State of New Jersey, stating the names of the parties and describing the lien or encumbrance of the State sought to be affected and advising the State within what time it is required to answer, if it desires to be heard, which time shall be the same as prescribed for the filing of answers in a summons issued to defendants served personally in the State. The notice shall set forth with particularity, in addition to the foregoing, (a) where the encumbrance or lien is for an inheritance tax, if known, the name of the decedent by reason of whose death the encumbrance or lien arises, the date of death of such

decedent, the county and state wherein such decedent resided at the date of death, and the names and addresses of the decedent's personal representatives, or, if none have been appointed, the names and addresses of the decedent's heirs-at-law, or (b) where the encumbrance or lien is for corporation taxes, or interest, costs or penalties imposed upon, or by reason of, a corporation tax, the name of the corporation against which the same was assessed or imposed. The plaintiff, his attorney or the clerk of the court may issue the notice.

**2A:45-3. Notice; upon whom served**

If the lien or encumbrance of the state is for a tax payable to the state or for any other right or claim of the state, other than a recognizance entered into or a criminal judgment rendered in any county of the state, the notice shall be served upon the attorney general, and, if for such a recognizance or judgment, upon the county prosecutor of the county wherein the recognizance was entered into or the judgment rendered. In all cases the notice shall be accompanied by a copy of the complaint.

**2A:45-4. Action; judgment; operation and effect**

On the return of the notice, duly served, or on appearance for the state, the action may proceed as in other cases, and a judgment therein shall bind the state and the lien of the state cut off, the same as if the judgment had been made against an individual. The claim of the state shall be made out of the surplus, if any, in the order or priority in which the lien of the state stands. In an action to foreclose the equity of redemption under a sale for taxes or other municipal liens or in any action of strict foreclosure or reforeclosure there may be entered a judgment barring and extinguishing any lien of the state on the lands described in the complaint, in case (a) no answer shall be made by the state; or (b) where a disclaimer shall be filed by the state; or (c) where it shall be determined that the lien of the tax or assessment or any part thereof or the lien or encumbrance so foreclosed is prior to the lien or encumbrance of the state.

**2A:45-5. Release of judgment from lien of state on real estate required for public improvement**

Whenever any real estate required for the purpose of carrying out a public improvement which has been authorized by law is subject to the lien of any judgment held by the state of New Jersey, the governor shall have power, by effective instruments, approved by the attorney general, sealed with the great seal of this state and attested by the secretary of state, to release such real estate so required from the lien of such judgment, if and when, upon application, the governor shall deem it to be in the public interest, and that there is remaining real estate subject to the lien of such judgment sufficient to secure the amount then due on such judgment.

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