

2A:44A-1

LEGISLATIVE HISTORY CHECKLIST
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("Construction Lien Law")

WJA: 2A:44A-1
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BILL NO: S1010
SPONSOR(S): Sinagra
DATE INTRODUCED: June 29, 1993
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SENATE: Commerce
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Senate committee substitute by superscript numbers
(2R) enacted for S1010, 811 & 1394
DATE OF PASSAGE: ASSEMBLY: December 2, 1993
SENATE: June 21, 1993
DATE OF APPROVAL: December 23, 1993
FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:
SPONSOR STATEMENT: Yes
COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes ALSO, A STATEMENT ON
SENATE FLOOR AMEND-
MENTS 6-17-93
FISCAL NOTE: No
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FOLLOWING WERE PRINTED:
REPORTS: No
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P.L.1993, CHAPTER 318, *approved December 23, 1993*
Senate Committee Substitute(Second Reprint)for
1993 Senate No. 1010, 811 and 1394

1 **AN ACT** concerning construction liens for improvements made to
2 real property, amending N.J.S.2A:15-6, supplementing Title 2A
3 of the New Jersey Statutes and repealing N.J.S.2A:44-64
4 through 2A:44-124, inclusive, and P.L.1979, c.301.

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

8 1. (New section) This act shall be known and may be cited as
9 the "Construction Lien Law."

10 2. (New section) As used in this act:

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

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

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

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

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

37 "Equipment" means any machinery or other apparatus,
38 including rental equipment delivered to the site to be improved or
39 used on the site to be improved, for incorporation in the improved
40 real property or for use in the construction of the improvement

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted June 17, 1993.

² Assembly AJL committee amendments adopted November 8, 1993.

1 of the real property but not incorporated therein. A lien for
2 equipment shall arise only for equipment used on site for the
3 improvement of real property, including equipment installed in
4 the improved real property. In the case of rental equipment, the
5 amount of any lien shall be limited to the rental rates as set forth
6 in the rental contract.

7 "Filing" means the lodging for record and indexing of the
8 documents authorized to be filed or recorded pursuant to this act
9 in the office of the county clerk, or, in the case of real property
10 located in more than one county, in the office of the county clerk
11 of each such county.

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

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

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

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

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

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

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

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

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

22 "Services" means professional services performed by a licensed
23 architect, engineer or land surveyor who is not a salaried
24 employee of the contractor, a subcontractor or the owner and
25 who is in direct privity of contract with the owner for the
26 preparation of plans, documents, studies, or the provision of other
27 services by a licensed architect, engineer or land surveyor
28 prepared in connection with a proposed or an actual physical
29 change to real property, whether or not such physical change is
30 undertaken.

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

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

38 "Supplier" means any supplier of material or equipment,
39 including rental equipment, having a direct privity of contract
40 with an owner, contractor or subcontractor in direct privity of
41 contract with a contractor. The term "supplier" shall not include
42 a person who supplies fuel for use in motor vehicles or equipment
43 delivered to or used on the site to be improved or a seller of
44 personal property who has a ²security agreement providing a²
45 right to perfect either a security interest pursuant to Title 12A
46 of the New Jersey Statutes or a lien against the motor vehicle
47 pursuant to applicable law.

48 "Work" means any activity, including labor, performed in
49 connection with the improvement of real property. The term
50 "work" includes architectural, engineering or surveying services
51 provided by salaried employees of a contractor or subcontractor,
52 as part of the work of the contractor or subcontractor, provided,
53 however, that the right to file a lien claim for those services
54 shall be limited to the contractor or subcontractor. -

1 3. (New section) Any contractor, subcontractor or supplier
2 who provides work, services, material or equipment pursuant to a
3 contract, shall be entitled to a lien for the value of the work or
4 services performed, or materials or equipment furnished in
5 accordance with the contract and based upon the contract price,
6 subject to the provisions of sections 9 and 10 of this act. The lien
7 shall attach to the interest of the owner in the real property. If a
8 tenant contracts for improvement of the real property and the
9 contract for improvement has not been authorized in writing by
10 the owner of a fee simple interest in the improved real property,
11 the lien shall attach only to the leasehold interest of the tenant.

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

14 4. (New section) Liens for the following improvements shall
15 attach to real property only in the manner herein prescribed. In
16 the case of an improvement:

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

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

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

35 5. (New section) No liens shall attach nor shall a lien claim be
36 filed:

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

41 b. For public works or improvements to real property
42 contracted for and awarded by a public entity; provided, however,
43 that nothing herein shall affect any right or remedy established
44 pursuant to the "municipal mechanic's lien law,"
45 N.J.S.2A:44-125 et seq. 1;

46 c. For work, services, material or equipment furnished
47 pursuant to a residential construction contract unless there is
48 strict compliance with sections 2(21 and 22) 20 and 21² of this
49 act.¹

50 6. (New section) A lien claim shall be signed, acknowledged
51 and verified by oath of the claimant or, in the case of a
52 partnership or corporation, a partner or duly authorized officer
53 thereof, and filed with the county clerk not later than 90 days
54 following the date the last work, services, material or equipment

1 was provided for which payment is claimed. No lien shall attach,
2 or be enforceable under the provisions of this act ¹and, in the
3 case of a residential construction contract, compliance with
4 sections ²[21 and 22] 20 and 21² of this act¹, unless the lien claim
5 is filed in the form, manner and within the time provided by this
6 section and section 8 of this act, and a copy thereof served on the
7 owner and, if any, the contractor and the subcontractor, against
8 whom the claim is asserted, pursuant to section 7 of this act.

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

14 7. (New section) Within 10 business days following the filing
15 of a lien claim, the claimant shall, by personal service or
16 registered or certified mail, return receipt requested, postage
17 prepaid, serve or mail a copy of the lien claim as prescribed in
18 section 8 of this act to the last known business address or place
19 of residence of the owner and, if any, of the contractor and the
20 subcontractor, against whom the claim is asserted. Proof of
21 timely mailing shall satisfy the requirement of service of the lien
22 claim. The service of the lien claim provided for in this section
23 shall be a condition precedent to enforcement of the lien;
24 however, the service of the lien claim outside the prescribed time
25 period shall not preclude enforceability unless the party not
26 timely served proves by a preponderance of the evidence that the
27 late service has materially prejudiced its position. Disbursement
28 of funds by the owner, a contractor or a subcontractor, or the
29 creation or conveyance of an interest in real property by the
30 owner, without actual knowledge of the filing of the lien claim,
31 shall constitute prima facie evidence that the party has been
32 materially prejudiced.

33 8. (New section) The lien claim shall be filed in substantially
34 the following form:

35 CONSTRUCTION LIEN CLAIM

36 TO THE CLERK, COUNTY OF _____:

37 In accordance with the terms and provisions of the
38 "Construction Lien Law," P.L. , c. (C.), notice is hereby
39 given that:

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

- 47 a.
- 48 b.
- 49 c. (etc.)

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

1 Total contract amount: \$ _____
 2 Amendments to contract: \$ _____
 3 Total contract amount
 4 and amendments to contract: \$ _____
 5 Less: Agreed upon
 6 credits: \$ _____
 7 Contract amount paid
 8 to date: \$ _____
 9 Amendments to contract
 10 amount paid to date: \$ _____
 11
 12 TOTAL REDUCTIONS FROM CONTRACT
 13 AMOUNT AND AMENDMENTS TO
 14 CONTRACT: \$ _____
 15
 16 TOTAL LIEN CLAIM AMOUNT: \$ _____

18 A Notice of Unpaid Balance and ¹Right to File Lien¹ (if
 19 any) was previously filed with the County Clerk
 20 of _____ County on _____ 19____
 21 as No. _____ in Book _____ Page _____.

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

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

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

41 NOTICE TO OWNER OF REAL PROPERTY
 42 Your real estate may be subject to sale to satisfy the amount
 43 asserted by this claim. However, your real estate cannot be sold
 44 until the facts and issues which form the basis of this claim are
 45 decided in a legal proceeding before a court of law. The lien
 46 claimant is required by law to commence suit to enforce this
 47 claim.
 48 The claimant filing this lien claim shall forfeit all rights to
 49 enforce the lien and shall be required to discharge the lien of
 50 record, if the claimant fails to bring an action in the Superior
 51 Court, in the county in which the real property is situated, to
 52 establish the lien claim:

53 1. Within one year of the date of the last provision of work,
 54 services, material or equipment, payment for which the lien

1 claim was filed; or
2 2. Within 30 days following receipt of written notice, by
3 personal service or certified mail, return receipt requested, from
4 the owner requiring the claimant to commence an action to
5 establish the lien claim.
6 You will be given proper notice of the proceeding and an
7 opportunity to challenge this claim and set forth your position.
8 If, after you (and/or your contractor or subcontractor) have had
9 the opportunity to challenge this lien claim, the court of law
10 enters a judgment against you and in favor of the claimant filing
11 this lien claim, and thereafter you fail to pay that judgment, your
12 real estate may then be sold to satisfy the judgment.

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

- 15 1. You (or your contractor or subcontractor) can pay the
16 claimant and obtain a discharge of lien claim from the claimant;
17 or
- 18 2. You (or your contractor or subcontractor) can cause the lien
19 claim to be discharged by filing a surety bond or making a deposit
20 of funds as provided for in section ²[32] 31² of P.L. , c.
21 (C.).

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

25 If you (or your contractor or subcontractor) choose to discharge
26 the lien claim by filing a surety bond or making a deposit of funds
27 as provided in section ²[32] 31² of P.L. , c. (C.), you will
28 retain your right to challenge this lien claim in a legal proceeding
29 before a court of law.

30 **NOTICE TO SUBCONTRACTOR OR CONTRACTOR:**

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

35
36 Signed _____
37 For _____
38 Individual, Firm or Corporation

39 Date:

40
41 **CLAIMANT'S REPRESENTATION AND VERIFICATION**

- 42 Claimant represents and verifies that:
- 43 1. The amount claimed herein is due and owing at the date of
44 filing, pursuant to claimant's contract described in the
45 construction lien claim.
 - 46 2. The work, services, material or equipment for which this
47 lien claim is filed was provided exclusively in connection with the
48 improvement of the real property which is the subject of this
49 claim.
 - 50 3. This claim has been filed within 90 days from the last date
51 upon which the work, services, materials or equipment for which
52 payment is claimed was provided.
 - 53 4. The foregoing statements made by me are true, to the best
54 of my knowledge. I am aware that if any of the foregoing

1 statements made by me are false, this construction lien claim
2 will be void and that I will be liable for damages to the owner or
3 any other person injured as a consequence of the filing of this lien
4 claim.

5
6 Name of Claimant _____

7 Signed _____

8 (Type or Print Name and Title)

9 Date:

10 9. (New section) The amount of a lien claim shall be limited
11 to the contract price, or any unpaid portion thereof, whichever is
12 less, of the claimant's contract for the work, services, material
13 or equipment provided.

14 10. (New section) ²[A lien claim, subject to the limitations of
15 section 6 of this act, shall attach from the time of filing of the
16 lien claim to the interest of the owner.] Subject to the
17 limitations of section 6 of this act, the lien claim shall attach to
18 the interest of the owner from and after the time of filing of the
19 lien claim.² Except as provided by section ²[²¹] ²⁰² of this act,
20 no lien claim shall attach to the estate or interest acquired by a
21 bona fide purchaser first recorded or lodged for record; nor shall
22 a lien claim enjoy priority over any mortgage, judgment or other
23 lien first recorded, lodged for record, filed or docketed. A lien
24 claim filed under the provisions of this act shall be subject to the
25 effect of a notice of settlement filed pursuant to P.L.1979, c.406
26 (C.46:16A-1 et seq.). Except as set forth in ¹[section 15] sections
27 15 and ²[²²] ²¹² of this act, the maximum amount for which an
28 owner will be liable or an interest in real property subject to a
29 lien under this act for one or more lien claims filed pursuant to
30 this act shall not be greater than:

31 a. In the case of a lien claim filed by a contractor, the total
32 amount of the contract price of the contract between the owner
33 and the contractor less the amount of payments made, if any,
34 prior to receipt of a copy of the lien claim pursuant to section 7
35 of this act, by the owner to the contractor or any other claimant
36 who has filed a lien claim or a Notice of Unpaid Balance ¹and
37 Right to File Lien¹ pursuant either to a contract with the
38 contractor and any subcontractor or supplier, or a contract
39 between a subcontractor of the contractor and any supplier or
40 other subcontractor; or

41 b. In the case of a lien claim filed by a subcontractor or
42 supplier, the amount provided in subsection a. of this section, or
43 the contract price of the contract between the contractor or
44 subcontractor and the subcontractor or supplier, as applicable,
45 pursuant to which the work, services, materials or equipment is
46 provided by the subcontractor or supplier, less the amount of
47 payments made, if any, prior to receipt of a copy of the lien
48 claim pursuant to section 7 of this act, to the contractor or
49 supplier or any other claimant who has filed a lien claim or a
50 Notice of Unpaid Balance ¹and Right to File Lien¹ pursuant to a
51 contract with such subcontractor or supplier, whichever is less.

52 11. (New section) A lien claim may be amended by the filing
53 of an amendment with the county clerk. The amended lien claim
54 shall comply with all the conditions and requirements for the

1 filing of a lien claim, including the notice requirements of section
2 7 of this act, as well as the conditions and requirements of this
3 section and subject to the limitations of section 10 of this act.
4 That portion of the amended lien claim in excess of the amount
5 previously claimed shall attach as of the date of filing of the
6 amended lien claim.

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

9 **AMENDMENT TO CONSTRUCTION LIEN CLAIM**
10 **TO THE CLERK, COUNTY OF _____:**

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

17 This construction lien claim was claimed against the interest
18 of _____ (name) as (check one):

- 19 _____ Owner
- 20 _____ Lessee
- 21 _____ Other (describe) _____

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

27 This amends a lien claim which was previously filed with the
28 County Clerk of _____ County on _____, 19__ as
29 No. _____ in Book No. _____, Page _____. A Notice of Unpaid
30 Balance ¹and Right to File Lien¹ (if any) was previously filed
31 with the County Clerk of _____ on _____, 19__ as
32 No. _____ in Book No. _____, Page _____.

33 Amendments to the original claim were recorded in the office
34 of the County Clerk on _____, 19__ as No. _____ in Book
35 No. _____, Page _____. (Complete if applicable)

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

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

- 42 a.
- 43 b.
- 44 c. (etc.)

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

47 **NOTICE TO OWNER OF REAL PROPERTY**
48 (Same as for lien claim)

49 **NOTICE TO SUBCONTRACTOR OR CONTRACTOR**
50 (Same as for lien claim)

51 **CLAIMANT'S REPRESENTATION AND VERIFICATION**
52 (Same as for lien claim)
53
54

1 12. (New section) Upon receipt of notice of a lien claim, the
 2 owner shall be authorized to withhold and deduct the amount
 3 claimed from the unpaid part of the contract price that is or
 4 thereafter may be due and payable to the contractor or
 5 subcontractor, or both. The owner may pay the amount of the
 6 lien claim to the claimant unless the contractor or subcontractor
 7 against whose account the lien is filed notifies the owner 2and
 8 the lien claimant² in writing within 20 days of service of the lien
 9 claim upon both the owner and the contractor or subcontractor,
 10 that the claimant is not owed the monies claimed and the reasons
 11 therefor. Any such payment made by the owner shall constitute a
 12 payment made on account of the contract price of the contract
 13 with the contractor or subcontractor, or both, against whose
 14 account the lien is filed.

15 13. (New section) a. Each county clerk shall provide a book
 16 designated as the "Construction Lien Book" in which each clerk
 17 shall enter each Notice of Unpaid Balance 1and Right to File
 18 Lien¹ and Amended Notice of Unpaid Balance 1and Right to File
 19 Lien¹, and each lien claim and amended lien claim, and each
 20 discharge, subordination or release of a lien claim or Notice of
 21 Unpaid Balance 1and Right to File Lien¹ presented for filing
 22 pursuant to the provisions of this act.

23 b. The county clerk shall cause marginal notations to be made
 24 upon each document filed pursuant to this act, as follows: upon
 25 each Notice of Unpaid Balance 1and Right to File Lien¹ whenever
 26 an Amended Notice of Unpaid Balance 1and Right to File Lien¹
 27 or a discharge relative thereto is filed; upon each lien claim
 28 whenever an amended lien claim relative thereto is filed; upon
 29 each Notice of Unpaid Balance 1and Right to File Lien¹ whenever
 30 a lien claim or amended lien claim relative thereto is filed; upon
 31 each lien claim or amended lien claim whenever a discharge,
 32 subordination or release of a lien claim relative thereto is filed.
 33 In addition, the clerk shall cause a notation of the date of
 34 commencement of an action to enforce a lien claim to be made
 35 upon the lien claim or amended lien claim relative thereto. The
 36 failure of the clerk to cause a marginal notation to be made shall
 37 not affect the validity or enforceability of any document filed
 38 pursuant to this act.

39 c. The county clerk shall provide and maintain on a daily basis
 40 an index book designated as the "Construction Lien Index Book,"
 41 setting forth therein in alphabetical order, arranged by the names
 42 of the owners, and by the names of the claimants, each Notice of
 43 Unpaid Balance 1and Right to File Lien¹, Amended Notice of
 44 Unpaid Balance 1and Right to File Lien¹, lien claim, amended
 45 lien claim, discharge, subordination and release of a lien claim or
 46 Notice of Unpaid Balance 1and Right to File Lien¹.

47 d. Each county clerk shall charge the following fees for the
 48 filing and marginal notation of the documents authorized to be
 49 filed by this act:

50	Each Notice of Unpaid Balance	
51	<u>1</u> and <u>Right to File Lien</u> ¹ or	
52	Amended Notice of Unpaid Balance	
53	<u>1</u> and <u>Right to File Lien</u> ¹	\$ 4.50
54	Each lien claim or amended lien claim	\$ 4.50

1 Each discharge, subordinate or release of
2 lien claim or release of Notice of Unpaid
3 Balance ¹and Right to File Lien¹ \$ 2.00
4 Each marginal notation \$ 1.00
5 14. (New section) a. A claimant filing a lien claim shall
6 forfeit all rights to enforce the lien, and shall immediately
7 discharge the lien of record, if the claimant fails to bring an
8 action in the Superior Court, in the county in which the real
9 property is situated, to establish the lien claim:
10 (1) Within one year of the date of the last provision of work,
11 services, material or equipment, payment for which the lien
12 claim was filed; or
13 (2) Within 30 days following receipt of written notice, by
14 personal service or certified mail, return receipt requested, from
15 the owner requiring the claimant to commence an action to
16 establish the lien claim.
17 b. Any lien claimant who forfeits a lien pursuant to subsection
18 a. of this section and fails to discharge that lien of record in
19 accordance with section ²[31] ³⁰² of this act, shall be liable for
20 all court costs, and reasonable legal expenses, including
21 attorneys' fees, incurred by the owner, the contractor, or
22 subcontractor, or any combination, in defending or causing the
23 discharge of the lien claim. The court may, in addition, enter
24 judgment against the claimant for damages to any of the parties
25 adversely affected by the lien claim.
26 c. Whenever any claimant shall commence an action in the
27 Superior Court of New Jersey to enforce a lien claim as provided
28 by this act, the claimant shall cause a Notice of Lis Pendens to
29 be filed in the office of the county clerk or register pursuant to
30 the provisions of N.J.S.2A:15-6 et seq.
31 d. Any disputes arising out of the improvement which is the
32 subject of a lien claim but which are unrelated to any action to
33 enforce a lien claim may be brought in a separate action.
34 15. (New section) a. If a lien claim is without basis, the
35 amount of the ¹lien claim is willfully overstated, or the lien claim
36 is not filed in substantially the form or in the manner or at a
37 time not in accordance with the provisions of this act, the
38 claimant shall forfeit all claimed lien rights and rights to file
39 subsequent lien claims to the extent of the face amount claimed
40 in the lien claim. The claimant shall also be liable for all court
41 costs, and reasonable legal expenses, including attorneys' fees,
42 incurred by the owner, contractor or subcontractor, or any
43 combination of owner, contractor and subcontractor, in defending
44 or causing the discharge of the lien claim. The court ²[may]
45 shall², in addition, enter judgment against the claimant for
46 damages to any of the parties adversely affected by the lien
47 claim.
48 b. If a defense to a lien claim is ²[frivolous or]² without basis,
49 the party maintaining the defense shall be liable for all court
50 costs, and reasonable legal expenses, including attorneys' fees,
51 incurred by any of the parties adversely affected by the defense
52 to the lien claim. The court ²[may] shall², in addition, enter
53 judgment against the party maintaining the frivolous defense for
54 damages to any of the parties adversely affected by said defense.

1 c. If a lien claim is forfeited pursuant to this section, or
2 section 14 of this act, nothing herein shall be construed to bar the
3 filing of a subsequent lien claim, provided, however, any
4 subsequent lien claim shall not include a claim for the work,
5 services, equipment or material claimed within the forfeited lien
6 claim.

7 ²[16. (New section) A claimant shall, within 10 days following
8 commencement of an action to enforce a lien claim, provide the
9 county clerk with a certificate, attested to by the claimant or
10 the claimant's attorney, specifying the caption of the action and
11 that an action has been commenced on the lien claim, and
12 identifying the court in, and date upon, which the action has been
13 commenced. Upon receipt of the certificate, the county clerk
14 shall endorse on the lien claim that an action has been
15 commenced on the lien claim, and specify the court in which the
16 action has been brought. The filing of the certificate shall be a
17 condition for maintaining the action, however, the failure to file
18 the certificate within the prescribed time period shall not impede
19 the maintaining of the action unless a party proves by a
20 preponderance of the evidence that the late filing has materially
21 prejudiced its position. Disbursement of funds by an owner,
22 contractor or subcontractor, or the creation or conveyance of an
23 interest in real property by the owner, in good faith, without
24 actual knowledge of the filing of the lien claim shall constitute
25 prima facie evidence that the party has been materially
26 prejudiced.]²

27 ²[17.] 16.2 (New section) a. A claimant shall join as party
28 defendants the contractor or subcontractor who is alleged to have
29 failed to make the payments for which the lien claim has been
30 filed and any other person having an interest in the real property
31 that would be adversely affected by the judgment. A party
32 required to be joined under this subsection shall be joined if
33 feasible pursuant to R.4:28-1(a) of the Rules Governing the
34 Courts of the State of New Jersey, unless prohibited by law.

35 b. Any party, to an action to establish a lien shall be entitled to
36 any defense available to any other party in contesting the amount
37 for which a claimant seeks to have his lien reduced to judgment.

38 ²[18.] 17.2 (New section) No lien claim under this act or right
39 thereto shall abate by reason of the death of any party in interest
40 and the right to the lien claim may be asserted by the personal
41 representative of a deceased contractor, subcontractor, or
42 supplier against the personal representative of a deceased owner,
43 contractor or subcontractor.

44 ²[19.] 18.2 (New section) ²This section shall solely apply to
45 work, services, material or equipment furnished under a
46 residential construction contract.² If a lien attaches to an
47 interest in real property, the lien claimant shall release a
48 proportionate share of the interest in real property from the lien
49 upon receipt of payment for that proportionate share. This
50 proportionate share shall be calculated in the following manner:

51 a. If there is a contract between the lien claimant and the
52 owner which provides for an allocation by lot or tract, ¹[then
53 except as set forth in subsection c. of this section,]¹ that
54 allocation of the proportionate share shall be binding upon the
55 lien claimant.

1 b. If the work performed by the lien claimant was for a
2 condominium in which a master deed is filed before the lien
3 attaches, or for work performed for a cooperative in which a
4 master declaration is filed before the lien attaches, then the
5 proportionate share shall be allocated in an amount equal to the
6 percentage of common elements attributable to each unit.

7 c. If ¹[there is an allocation by contract under subsection a. of
8 this section and a master deed or master declaration is filed
9 before a lien claim attaches to the interest in real property, then
10 the proportionate share shall be equal to the percentage of
11 common elements attributable to each unit and not the allocation
12 set forth in the contract] subsection a. or b. of this section does
13 not apply, then the lien shall not be released as to any portion of
14 the interest in real property unless the lien claimant and the
15 owner otherwise agree in a writing signed by both parties¹.

16 d. ¹[if subsection a., b., or c. does not apply, then the lien shall
17 not be released as to any portion of the interest in real property
18 unless the lien claimant and the owner otherwise agree in a
19 written document signed by both parties.

20 e.]¹ If a lien claimant receives payment of its proportionate
21 share but refuses to discharge its lien claim, then upon
22 application to a court having jurisdiction thereof, the court shall
23 order the discharge of the lien claim to the extent of that
24 proportionate share. The lien claimant shall be further subject to
25 the provisions of section ²[31] ³⁰² of this act ¹, and any amounts
26 to be paid shall be paid from the amount due the claimant¹.

27 ²[20.] ¹⁹² (New section) a. For work performed solely within
28 a unit in a condominium or cooperative, the lien shall only attach
29 to the interest of the owner in the condominium or cooperative
30 unit.

31 b. If an interest in real property is conveyed after work is
32 performed but before a lien attaches to that property, then the
33 lien shall attach to the real property retained by the owner, but
34 shall not attach to the real property or interest therein previously
35 conveyed.

36 ²[21.] ²⁰² (New section) All valid liens filed pursuant to this
37 act shall attach to the interest of the owner from the time of
38 filing of the lien claim in the office of the county clerk, subject
39 to the provisions of section 10 of this act.

40 a. In the event of the creation, conveyance, lease or mortgage
41 of an estate or interest in real property to which improvements
42 have been made that are subject to the lien provisions of this act,
43 a lien claim validly filed under this act shall have priority over
44 any prior creation, conveyance, lease or mortgage of an estate or
45 interest in real property, only if the claimant has filed with the
46 county clerk prior to that creation, conveyance, lease or
47 mortgage, a Notice of Unpaid Balance ¹and Right to File Lien¹ in
48 substantially the following form:

49 TO THE CLERK, COUNTY OF _____:

50 In accordance with the terms and provisions of the
51 "Construction Lien Law," P.L. . c. (C.), notice is hereby
52 given that:

53 1. (Name of claimant) of (address of claimant) has on (date) a
54 potential construction lien against the below described property

1 of (owner against whose property the lien will be claimed), in the
2 amount of (\$), for the value of the work, services, material or
3 equipment ²[delivery]² provided in accordance with a contract
4 with (name of contracting party with whom claimant has a
5 contract) for the following work, services, materials or
6 equipment ²[delivery]²:

- 7 a.
- 8 b.
- 9 c. (etc.)

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

14 Total contract amount: \$ _____
15 Amendments to contract: \$ _____
16 Total contract amount
17 and amendments to contract: \$ _____
18 Less: Agreed upon
19 credits: \$ _____
20 Contract amount paid
21 to date: \$ _____
22 Amendments to contract
23 amount paid to date: \$ _____
24 TOTAL REDUCTIONS FROM CONTRACT
25 AMOUNT AND AMENDMENTS TO
26 CONTRACT: \$ _____
27 TOTAL LIEN CLAIM AMOUNT: \$ _____

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

- 30 _____ Owner
- 31 _____ Lessee
- 32 _____ Other (describe): _____ in that
33 certain tract or parcel of land and premises described as
34 Block _____, Lot _____, on the tax map of the _____
35 of _____, County of _____. State of New Jersey,
36 for the improvement of which property the aforementioned work,
37 services, materials or equipment was provided.

38 4. The work, services, materials or equipment ²[delivery]² was
39 provided pursuant to the terms of a written contract (or, in the
40 case of a supplier, a delivery or order slip signed by the owner,
41 contractor, or subcontractor having a direct contractual relation
42 with a contractor, or an authorized agent of any of them),
43 dated _____, between (claimant) and (name of other
44 contracting party) of (address).

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

47 6. ¹The written contract (is) (is not) (cross out inapplicable
48 portion) a residential construction contract as defined in section
49 2 of this act.

50 ^{2.1} This notification has been filed prior or subsequent to
51 completion of the work, services, materials or equipment
52 ²[delivery]² as described above. The purpose of this notification
53 is to advise the owner and any other person who is attempting to
54 encumber or take transfer of said property described above that a

1 potential construction lien may be filed within the 90 day period
2 following the date of the provision of the last work, services,
3 materials or equipment ²{delivery}² as set forth in paragraph 5.

4
5 _____
6 Claimant

7 CLAIMANT'S REPRESENTATION AND VERIFICATION

8 Claimant represents and verifies that:

9 1. The amount claimed herein is due and owing at the date of
10 filing, pursuant to claimant's contract described in the Notice of
11 Unpaid Balance ¹and Right to File Lien¹.

12 2. The work, services, material or equipment for which this
13 Notice of Unpaid Balance ¹and Right to File Lien¹ is filed was
14 provided exclusively in connection with the improvement of the
15 real property which is the subject of this Notice of Unpaid
16 Balance ¹and Right to File Lien¹.

17 3. The Notice of Unpaid Balance ¹and Right to File Lien¹ has
18 been filed within 90 days from the last date upon which the work,
19 services, materials or equipment for which payment is claimed
20 was provided.

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

23 Name of Claimant _____

24 Signed _____

25 (Type or Print Name and Title)

26 Date:

27 b. In the event that the claimant elects to file a Notice of
28 Unpaid Balance ¹and Right to File Lien¹ as described above, it
29 shall not be necessary to serve a copy of said Notice of Unpaid
30 Balance ¹and Right to File Lien¹ upon any interested party.

31 c. After the filing of a Notice of Unpaid Balance ¹and Right to
32 File Lien¹, any person claiming title to or an estate or interest in
33 or a lien upon the real property described in the Notice of Unpaid
34 Balance ¹and Right to File Lien¹, shall be deemed to have
35 acquired said title, estate, interest or lien with knowledge of the
36 anticipated filing of a lien claim, and shall be subject to the
37 terms, conditions and provisions of that lien claim within the
38 period provided by section 6 of this act and as set forth in the
39 Notice of Unpaid Balance ¹and Right to File Lien¹. A Notice of
40 Unpaid Balance ¹and Right to File Lien¹ filed under the
41 provisions of this act shall be subject to the effect of a notice of
42 settlement filed pursuant to P.L. 1979, c. 406 (C. 46:16A-1 et seq.).

43 d. The Notice of Unpaid Balance ¹and Right to File Lien¹ shall
44 be effective for 90 days from the date of the provision of the
45 last work, services, materials or equipment delivery for which
46 payment is claimed as set forth in paragraph 5 of the Notice of
47 Unpaid Balance ¹and Right to File Lien¹.

48 e. The filing of a Notice of Unpaid Balance ¹and Right to File
49 Lien¹ shall not constitute the filing of a lien claim in accordance
50 with the provisions of this act, nor does it extend the time for the
51 filing of a lien claim in accordance with the provisions of this act.

52 f. Failure to file a Notice of Unpaid Balance ¹and Right to
53 File Lien¹ shall not affect the claimant's lien rights arising under
54 the provisions of this act, to the extent that no creation.

1 conveyance, lease or mortgage of an interest in real property has
2 taken place prior to the filing of a Notice of Unpaid Balance ¹and
3 Right to File Lien or lien¹ claim.

4 g. A Notice of Unpaid Balance ¹and Right to File Lien¹ may
5 be amended by the filing of an Amended Notice of Unpaid
6 Balance ¹and Right to File Lien¹ in accordance with the
7 provisions of this section.

8 ²[^{122.}] 21.² a. The Legislature finds that the ability to sell
9 and purchase residential housing is essential for the preservation
10 and enhancement of the economy of the State of New Jersey and
11 that while there exists a need to provide contractors,
12 subcontractors and suppliers with statutory benefits to enhance
13 the collection of money for goods, services and materials
14 provided for the construction of residential housing in the State
15 of New Jersey, the ability to have a stable marketplace in which
16 families can acquire homes without undue delay and uncertainty
17 and the corresponding need of lending institutions in the State of
18 New Jersey to conduct their business in a stable environment and
19 to lend money for the purchase or finance of home construction
20 or renovations requires that certain statutory provisions as
21 related to the lien benefits accorded to contractors,
22 subcontractors and suppliers be modified. The Legislature
23 further finds that the construction of residential housing
24 generally involves numerous subcontractors and suppliers to
25 complete one unit of housing and that the multiplicity of lien
26 claims and potential for minor monetary disputes poses a serious
27 impediment to the ability to transfer title to residential real
28 estate expeditiously. The Legislature further finds that the
29 purchase of a home is generally one of the largest expenditures
30 that a family or person will make and that there are a multitude
31 of other State and federal statutes and regulations, including the
32 "New Home Warranty and Builders' Registration Act" P.L.1977,
33 c.467 (C.46:3B-1 et seq.) and "The Planned Real Estate
34 Development Full Disclosure Act" P.L.1977, c.419 (C.45:22A-21
35 et seq.), which afford protection to consumers in the purchase
36 and finance of their homes, thereby necessitating a different
37 treatment of residential real estate as it relates to the rights of
38 contractors, suppliers and subcontractors to place liens on
39 residential real estate. The Legislature declares that separate
40 provisions concerning residential construction will provide a
41 system for balancing the competing interests of protecting
42 consumers in the purchase of homes and the contract rights of
43 contractors, suppliers and subcontractors to obtain payment for
44 goods and services provided.

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

48 (1) As a condition precedent to the filing of any lien arising
49 under a residential construction contract, a lien claimant shall
50 first file a Notice of Unpaid Balance and Right to File Lien in
51 accordance with the provisions of subsection a. of section ²[21]
52 20² of this act, and comply with all other provisions of this
53 section.

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

5 (3) Unless the parties have otherwise agreed in writing to an
6 alternative dispute resolution mechanism, simultaneously with
7 the service under paragraph (2) of this subsection, the lien
8 claimant shall also serve a demand for arbitration and fulfill all
9 the requirements and procedures of the American Arbitration
10 Association to institute an expedited proceeding before a single
11 arbitrator designated by the American Arbitration Association.

12 (4) Upon the closing of all hearings in the arbitration, the
13 arbitrator shall make the following determinations: (a) whether
14 the Notice of Unpaid Balance and Right to File Lien was in
15 compliance with section ²[21] 20² of this act and whether service
16 was proper under section 7 of this act; (b) the validity and
17 amount of any lien claim which may be filed pursuant to the
18 Notice of Unpaid Balance and Right to File Lien; (c) the validity
19 and amount of any liquidated or unliquidated setoffs or
20 counterclaims to any lien claim which may be filed; and (d) the
21 allocation of costs of the arbitration among the parties.

22 (5) In the event the amount of any setoffs or counterclaims
23 presented in the arbitration are unliquidated and cannot be
24 determined by the arbitrator in a liquidated amount, the
25 arbitrator, as a condition precedent to the filing of the lien
26 claim, shall order the lien claimant to post a bond, letter of
27 credit or funds with ²[a licensed title insurance company,]² an
28 attorney-at-law of New Jersey, or other such person or entity as
29 may be ordered by the arbitrator in such amount as the arbitrator
30 shall determine to be 110% of the approximate fair and
31 reasonable value of such setoffs or counterclaims, but in no event
32 shall the bond, letter of credit or funds exceed the amount of the
33 lien claim which may be filed. This 110% limitation regarding
34 any bond, letter of credit or funds shall also apply to any
35 alternative dispute resolution mechanism to which the parties
36 may agree.

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

46 (7) Any contractor, subcontractor or supplier whose interests
47 are affected by the filing of a Notice of Unpaid Balance and
48 Right to File Lien under section 10 of this act shall be permitted
49 to join in such arbitration; but the arbitrator shall not determine
50 the rights or obligations of any such parties except to the extent
51 those rights or obligations are affected by the lien claimant's
52 Notice of Unpaid Balance and Right to File Lien.

53 (8) Upon determination by the arbitrator that there is an
54 amount which, pursuant to a valid lien shall attach to the
55 improvement, the lien claimant shall, within 10 days of the lien

1 claimant's receipt of the determination, file such lien claim in
2 accordance with the provisions of section 8 of this act and furnish
3 any bond, letter of credit or funds required by the arbitrator's
4 decision. The failure to file such a lien claim, or furnish the
5 bond, letter of credit or funds, within the 10-day period, shall
6 cause any lien claim to be invalid.

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

14 (10) If either the lien claimant or the owner is aggrieved by
15 the arbitrator's determination, then either party may institute a
16 summary action in the Superior Court, Law Division, for the
17 vacation, modification or correction of the arbitrator's
18 determination. The arbitrator's determination shall be
19 confirmed unless it is vacated, modified or corrected by the
20 court. The court shall render its decision after giving due regard
21 to the time limits and procedures set forth in this act.

22 (11) In the event a Notice of Unpaid Balance and Right to File
23 Lien is filed and the owner conveys its interest in real property to
24 another person before a lien claim is filed, then prior to or at the
25 time of conveyance, the owner may make a deposit ²[into a title
26 indemnity fund with a title insurance company licensed to do
27 business in the State of New Jersey, or]² with the county clerk
28 where the improvement is located, in an amount no less than the
29 amount set forth in the Notice of Unpaid Balance and Right to
30 File Lien. For any deposit made with the county clerk, the
31 county clerk shall discharge the Notice of Unpaid Balance and
32 Right to File Lien or any related lien claim against the real
33 property for which the deposit has been made. After the issuance
34 of the arbitrator's determination set forth in paragraphs (4) and
35 (5) of this subsection, any amount in excess of that determined by
36 the arbitrator to be the amount of a valid lien claim shall be
37 returned forthwith to the owner who has made the deposit. The
38 balance shall remain where deposited unless the lien claim has
39 been otherwise paid, satisfied by the parties, forfeited by the
40 claimant, invalidated pursuant to paragraph (8) of this subsection
41 or discharged under section ²[34] 33² of this act. Notice shall be
42 given by the owner in writing to the lien claimant within five
43 days of making the deposit.

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

1 [13] If the aggregate sum of all lien claims attaching to any
 2 real property that is the subject of a residential construction
 3 contract exceeds the amount due under a residential purchase
 4 agreement, less the amount due under any previously recorded
 5 mortgages or liens other than construction liens, then upon entry
 6 of judgment of all such lien claims, each lien claim shall be
 7 reduced pro rata. Each lien claimant's share then due shall be
 8 equal to the monetary amount of the lien claim multiplied by a
 9 fraction in which the denominator is the total monetary amount
 10 of all valid claims on the owner's interest in real property
 11 against which judgment has been entered, and the numerator is
 12 the amount of each particular lien claim for which judgment has
 13 been entered. The amount due under the residential purchase
 14 agreement shall be the net proceeds of the amount paid less
 15 previously recorded mortgages and ²liens other than construction
 16 liens and ² any required recording fees.¹

17 ¹[22.] ²[23.1] 22.² (New section) Nothing in this act shall be
 18 deemed to supersede the mortgage priority provisions of
 19 P.L.1985, c.353 (C.46:9-8.1 et seq.). Every mortgage shall have
 20 priority as to the land or other interest in real property described
 21 and any improvement wholly or partially erected or thereafter to
 22 be erected, constructed or completed thereon, over any lien
 23 which may be established by virtue of this act to the extent that
 24 the mortgage secures funds which have been applied to:

25 a. The payments of amounts due to any claimants who have
 26 filed a lien claim or a Notice of Unpaid Balance ¹and Right to
 27 File Lien¹;

28 b. The payment or the securing of payment of all or part of
 29 the purchase price of the land covered thereby;

30 c. The payment of any valid lien or encumbrance which is, or
 31 can be established as, prior to a lien provided for by this act;

32 d. The payment of any tax, assessment or other State or
 33 municipal lien or charge due or payable at the time of such
 34 payment;

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

41 f. Payment to the owner of that portion of the purchase price
 42 of the real property on which the improvements are made or to
 43 be made which have previously been paid by the owner, exclusive
 44 of any interest or any other carrying costs of such real property,
 45 provided, however, that at the time of the payment of such funds
 46 to the owner, the budget upon which the loan was made indicated
 47 that the amount of the loan is not less than the total of: (1) the
 48 purchase price of the real property, (2) the cost of constructing
 49 the improvements, and (3) any cost listed in subsections c., d. and
 50 e. of this section; or

51 g. An escrow in an amount not to exceed 150% of the amount
 52 necessary to secure payment of charges described in subsections
 53 a., c., d. and e. of this section.

54 ¹[23.] ²[24.1] 23.² (New section) All lien claims established by

1 judgment shall be concurrent and shall be paid pro rata out of the
2 lien fund and the proceeds of the sale authorized by this act.

3 ¹[24. (New section) a. Nothing set forth in this act shall
4 preclude any party affected by the filing of a lien from making an
5 application by summary proceeding pursuant to the Rules
6 Governing the Courts of the State of New Jersey in order to
7 determine the validity or the amount of a lien, or if the affected
8 party can prove valid defenses, to seek an order requiring the lien
9 claimant to post a bond in an amount not to exceed the amount of
10 the lien claim. The provisions of section 15 of this act shall apply
11 to any such proceeding.

12 b. Within 15 days after any application for a summary
13 proceeding is made, the parties to such a proceeding shall
14 participate in the Complementary Dispute Resolution Program
15 which exists in the vicinage of the Superior Court, unless the
16 court orders otherwise. If the application is made in the United
17 States District Court for the District of New Jersey, then the
18 parties shall participate in any compulsory arbitration or
19 alternative dispute resolution process which may be available,
20 unless the court orders otherwise.]¹

21 ²[25.] 24.² (New section) When judgment is obtained under
22 this act there shall be filed in the office of the county clerk a
23 statement signed and sealed by the clerk of the court, containing:

- 24 a. The name of the court;
25 b. The names of the parties;
26 c. Whether judgment is against the owner, contractor or
27 subcontractor, or against the building and land only, or both; and
28 d. The amount and date of judgment.

29 There shall be filed with, or as part of, the statement, an oath
30 of the claimant, his attorney or agent, stating the amount
31 currently due thereon based on an updated statement of the
32 amount owing on the judgment.

33 ²[26.] 25.² (New section) If judgment in an action to enforce a
34 lien claim under this act is against the owner, contractor or
35 subcontractor, a writ of execution may issue thereon, as in other
36 cases; if against the improvements and land, a special writ of
37 execution may issue to make the amount recovered therein by
38 sale of the improvements and land.

39 If both general and special judgments are given, both writs of
40 execution may issue, separately or combined in one writ, and one
41 of such writs may issue after the return of the other for the
42 whole amount recovered or the residue as the case may require.

43 ²[27.] 26.² (New section) When a special writ of execution has
44 issued under this act, the sheriff or other officer shall advertise,
45 sell and convey the improvement and land in the same manner as
46 in the case of other execution sales.

47 ²[28.] 27.² (New section) The interests in real property set
48 forth in section ²[22] 21.² of this act shall have priority to all
49 subsequent liens under this act upon the land and upon the
50 improvements thereon, except such as may be removable as
51 between landlord and tenant, which may be sold and removed by
52 virtue of any lien for the erection, construction or completion of
53 the same, free from the prior encumbrances.

54 ²[29.] 28.² (New section) The sheriff or other officer

1 conducting the sale authorized by this act shall pay the proceeds
2 thereof to the clerk of the Superior Court, who shall distribute
3 the proceeds among the lien claims filed under this act before an
4 application for distribution thereof is made to the court. The
5 Superior Court shall provide proper disposition of proceeds of any
6 sale to the persons entitled thereto under this act. The amount
7 due a lien claimant shall not be paid over to him until after his
8 lien claim has been established by judgment.

9 ²[30.] 29.2 (New section) If the proceeds of the sale of the
10 improvements or land under any judgment obtained under this act
11 shall be more than sufficient to pay the judgments of the
12 claimants entitled to payment out of the proceeds of the sale
13 under this act, any surplus shall be distributed by the court out of
14 which the special writ of execution issued, to the defendants
15 holding liens, subject to that of claimants, according to priority
16 of their respective liens as determined in the judgment.

17 ²[31.] 30.2 (New section) a. When a lien claim has been filed
18 and the claim has been paid, satisfied or settled by the parties or
19 forfeited by the claimant, the claimant or his successor in
20 interest or his attorney shall, within 30 days, file with the county
21 clerk a certificate, duly acknowledged or proved, directing the
22 county clerk to discharge the lien claim of record, which
23 certificate shall contain:

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

30 b. If the claimant shall fail or refuse to file this certificate,
31 then upon application by any party in interest, upon notice to the
32 claimant, to be served upon him in the same manner as provided
33 by section 7 of this act, or upon satisfactory proof that the
34 claimant cannot be served, any judge of the Superior Court may,
35 upon good cause being shown, order the lien claim discharged.
36 The county clerk shall thereupon attach the certificate or order
37 to the original notice of lien claim on file and shall note on the
38 record thereof "discharged by certificate" or "discharged by
39 court order," as the case may be.

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

49 ²[32.] 31.2 (New section) When a lien claim is filed against
50 any improvement and land under this act, the owner, contractor
51 or subcontractor may execute and file with the proper county
52 clerk a bond in favor of the lien claimant, with a surety company,
53 duly authorized to transact business in this State, as surety
54 thereon, in an amount equal to 110% of the amount claimed by

1 the lien claimant and a payment in the amount of \$25,
2 conditioned upon the payment of any judgment and costs that
3 may be recovered by the lien claimant under this claim. As an
4 alternative, the owner, contractor or subcontractor may deposit
5 with the clerk of the Superior Court of New Jersey, funds
6 constituting an amount equal to 110% of the amount claimed by
7 the lien claimant and a payment in the amount of \$25,
8 conditioned upon the payment of any judgment and costs that
9 may be recovered by the lien claimant under this claim.

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

15 (a) a duly acknowledged certificate as provided in paragraph
16 (2) of subsection a. of section ²[34] 33² of this act;

17 (b) an order of discharge as provided in paragraph (3) of
18 subsection a. of section ²[34] 33² of this act;

19 (c) a judgement of dismissal or ²[final judgement in favor of
20 the owner, contractor or subcontractor as provided in subsection
21 b. of section 34 of this act] other final judgment against the lien
22 claimant²; or

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

27 ²[33.] 32.2 (New section) When the bond, deposit or any
28 combination thereof, authorized by section ²[32] 31² of this act,
29 is properly filed or deposited, the improvements and land
30 described in the lien claim shall thereupon be released and
31 discharged from the claim and no execution shall issue against
32 the improvements and land. The words "released by bond" or
33 "released by deposit of funds," as applicable, and a reference to
34 the time and place of filing of the bond or deposit shall be
35 entered by the county clerk upon the record of the lien claim.

36 ²[34.] 33.2 (New section) a. A lien claim may be discharged
37 of record by the county clerk:

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

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

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

46 b. When judgment of dismissal or final ²other² judgment ²[in
47 favor of the owner] against the lien claimant² is entered in an
48 action to enforce the lien claim under this act and no appeal is
49 taken within the time allowed for an appeal, or if an appeal is
50 taken within the time allowed for an appeal, or if an appeal is
51 taken and finally determined ²[in favor of the owner] against the
52 lien claimant², the court before which the judgment was
53 rendered, upon application and written notice to the lien claimant
54 as the court shall direct, shall order the county clerk to enter a

1 discharge of the lien claim.

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

7 ²[35.] 34.2 (New section) A discharge, subordination or release
8 of a lien claim or Notice of Unpaid Balance ¹and Right to File
9 Lien¹, a receipt of payment of a lien claim, or any order of the
10 court discharging or releasing a lien claim, shall recite the book
11 and page number of the original record of the lien claim, and a
12 full description of the property discharged or released. The
13 county clerk may refuse to discharge, release or satisfy a lien
14 claim or file a receipt of payment of a lien claim unless the
15 provisions of this section have been satisfied.

16 ²[36.] 35.2 (New section) A discharge, subordination or release
17 of a lien claim or Notice of Unpaid Balance ¹and Right to File
18 Lien¹ shall be duly acknowledged or proved, and recorded in a
19 properly indexed book for that purpose. A notation of the record
20 of the discharge of a lien claim or Notice of Unpaid Balance ¹and
21 Right to File Lien¹ shall be endorsed upon the margin of the
22 record in the book where the original lien or Notice of Unpaid
23 Balance ¹and Right to File Lien¹ is recorded stating that the
24 discharge is filed and recorded, giving the date of filing and
25 recording and setting forth the book and the page number where
26 the discharge, or receipt of payment of the lien or order
27 discharging the lien, is recorded.

28 ²[37.] 36.2 (New section) A person who fraudulently deprives a
29 person entitled to the benefits of this act shall be liable to that
30 person for any damages resulting therefrom.

31 ²[38.] 37.2 (New section) a. If required in a contract or upon
32 written request from an owner to a contractor, a subcontractor,
33 or both, the contractor or subcontractor shall, within 10 days,
34 provide the owner with an accurate and full list of the names and
35 addresses of each subcontractor and supplier who may have a
36 right to file a lien pursuant to the provisions of this act.

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

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

45 d. Reliance upon the verified list by the person requesting
46 same or by the owner shall be prima facie evidence establishing
47 the bona fides of payment made in reliance thereon and shall
48 constitute an absolute defense to any claim that the party making
49 such payment should have made additional inquiry to determine
50 the identity of potential claimants.

51 e. Any person to whom a written request has been made
52 pursuant to the provisions of subsection a. or b. of this section
53 who does not provide a list in compliance with this section shall
54 be directly liable in damages to the party requesting the list or to

1 the owner, including, but not limited to, court costs and the
2 reasonable legal expenses, including attorneys' fees, incurred by
3 said party or the owner, or both, in defending or causing the
4 discharge of a lien claim asserted by a party whose name has
5 been omitted from the list.

6 ²[39.] 38.² (New section) Waivers of construction lien rights
7 are against public policy, unlawful, and void, unless given in
8 consideration for payment for the work, services, materials or
9 equipment provided or to be provided, and such waivers shall be
10 effective only upon and to the extent that such payment is
11 actually received.

12 ²[40.] 39.² N.J.S.2A:15-6 is amended to read as follows:

13 2A:15-6. In every action, instituted in any court of this State
14 having civil jurisdiction or in the United States District Court for
15 the District of New Jersey, the object of which is to enforce a
16 lien [, other than a mechanic's lien,] upon real estate or to affect
17 the title to real estate or a lien or encumbrance thereon, plaintiff
18 or his attorney shall, after the filing of the complaint, file in the
19 office of the county clerk or register of deeds and mortgages, as
20 the case may be, of the county in which the affected real estate
21 is situate, a written notice of the pendency of the action, which
22 shall set forth the title and the general object thereof, with a
23 description of the affected real estate.

24 No notice of lis pendens shall be filed under this article in an
25 action to recover a judgment for money or damages only.

26 (cf: P.L.1960, c.159, s.1)

27 ²[41.] 40.² The following are repealed:

28 N.J.S.2A:44-64 through 2A:44-104, inclusive; N.J.S.2A:44-106
29 through 2A:44-124, inclusive; and
30 section 1 of P.L.1979, c.301 (C.2A:44-124.1).

31 ²[42.] 41.² This act shall take effect 120 days after enactment
32 and shall apply to any improvement for which a construction
33 permit is issued on or after that date.

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38 The "Construction Lien Law."

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1010, 811 and 1394

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Senate Bill Nos. 1010, 811 and 1394 (SCS/1R).

This substitute enacts the "Construction Lien Law" and repeals the current "Mechanics' Lien Law." It provides that a contractor, subcontractor or supplier who provides work, services, material or equipment for use in the improvement of real property pursuant to a written contract, is entitled to a lien on the owner's interest in the real property for the value of the work or services performed, or materials or equipment furnished in accordance with the contract. The substitute sets forth the procedure in which this lien will be attached for various types of improvements. No lien will attach for materials furnished or delivered subject to a security agreement pursuant to chapter 9 of the Uniform Commercial Code; or for public works or improvements to real property contracted for or awarded by a public entity.

A lien claim must be filed with the county clerk no later than 90 days following the date the last work, services, material or equipment was provided for which payment is claimed. A claimant will forfeit all rights to enforce a lien unless he brings an action in the Superior Court, in the county in which the real property is situated, to establish the lien claim within one year of the date of the last provision of work, services, material or equipment or within 30 days following receipt of written notice from the owner requiring the claimant to commence an action to establish the lien claim.

The amount of a lien is limited to the lesser of the contract price or any unpaid portion of the claimant's contract for the work, services, material or equipment provided.

Upon receipt of notice of a lien claim, the owner is 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 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 in writing within 20 days of service of the lien claim that the claimant is not owed the monies claimed and the reasons therefor.

An owner, contractor or subcontractor may obtain a discharge of a lien claim by paying the claimant or by executing and filing with the county clerk a surety bond in favor of the lien claimant in an amount equal to 110% of the amount claimed or depositing with

the clerk of Superior Court funds constituting 110% of the amount claimed. If the claimant is paid, the right to challenge the lien is lost. However, if a surety bond is filed or funds deposited, the right to challenge the lien claim is maintained.

The substitute provides that no lien claim may attach to the estate or interest acquired by a bona fide purchaser first recorded or lodged for record; nor may a lien claim enjoy priority over any mortgage, judgment or other lien first recorded, lodged for record, filed or docketed. In addition, a construction lien shall be subject to the effect of a notice of settlement. However, if a potential construction lien claimant files a Notice of Unpaid Balance prior to a creation, conveyance, lease or mortgage of an estate or interest in real property to which improvements have been made that are subject to the lien provisions of this bill, the claimant's lien claim filed against the owner's interest within 90 days of completion of the work, services, material or equipment delivered to the job site shall have priority over any prior creation, conveyance, lease or mortgage of an estate or interest in real property. After filing a Notice of Unpaid Balance, any person claiming title to, or an estate or interest in, or a lien upon, the real property described in the Notice of Unpaid Balance, would be deemed to have acquired the title, interest or lien with knowledge of the anticipated filing of a lien claim and would be subject to the terms, conditions and provisions of that lien claim within the applicable time restraints. The Notice of Unpaid Balance would be effective for 90 days from the date of the provision of the last work, services, materials or equipment for which payment is claimed. Failure to file a Notice of Unpaid Balance would not affect the claimant's lien rights arising under the provisions of this bill, to the extent that no creation, conveyance, lease or mortgage of an interest in real property has taken place prior to the filing of a Notice of Unpaid Balance or lien claim.

Every mortgage used for an improvement has priority as to the land or other interest in real property and any improvement.

All lien claims established by judgment are concurrent and will be paid pro rata out of the lien fund and the proceeds of the sale of the property to which the liens are attached.

A contractor or subcontractor, or both, must, within 10 days, provide the owner, upon his written request or pursuant to contract, with an accurate and full list of each subcontractor and supplier who may have a right to file a construction lien. This same requirement applies if a contractor requests such a list from a subcontractor. Reliance upon the list by the person requesting it is prima facie evidence establishing the bona fides of payment made in reliance thereon and constitutes an absolute defense to any claim that the party making such payment should have made additional inquiry to determine the identity of potential claimants.

The substitute provides that waivers of construction lien rights are unenforceable.

Finally, the substitute provides that the liens would be apportioned among various units of a condominium or corporation and for an accelerated procedure to test the validity of a lien and the accuracy of the amount of the lien.

The committee adopted amendments to sections 2, 10, 12, 15, 19, 21, 22, 32 and 34 and deleted current section 16 in entirety since it was duplicative of the lis pendens requirement in section 14. The definition of "supplier" in section 2 was amended to clarify the exception for a seller of real property who has a right to perfect a security interest to provide that the seller of real property has a security agreement providing the right to perfect. The first sentence in section 10 was rephrased to clarify that the lien claim attaches to the owner's interest from the time of filing. In section 12 the amendment provides that the contractor or subcontractor against whose account a line is filed must notify not only the owner but also the lien claimant in writing within 20 days of the service of the lien if disputing the claim. In section 15 the language "frivolous or" before "without basis" was omitted as redundant. In subsections a. and b. of that section the "may" was changed to "shall" concerning the entry of judgment by the court.

In section 18 of the substitute (as renumbered) a first sentence was added to clarify that the section applies only to work, services, material or equipment furnished under a residential contract. In section 20 (as renumbered) the word "delivery" as it appeared after "equipment" is deleted throughout the section. In section 21 (as renumbered) in paragraph (5) of subsection b. the reference to a "licensed title insurance company is deleted. Title companies were concerned that this language may have compelled them to hold the security. In paragraph (11) the reference to a "title indemnity fund with a title insurance company" was deleted for the same reason. The last sentence of that section was amended to include a reference to liens "other than construction liens" to correct an inadvertent omission. In section 31 (as renumbered) the reference in (c) was changed to "other final judgment against the lien claimant". In section 33 (as renumbered) the final judgment reference is changed from "in favor of the owner" to "against the lien claimant".

Other technical corrections were necessary throughout the substitute to correct internal cross references since section 16 was omitted by these amendments. Any references to sections numbered 16 or higher throughout the second reprint of the substitute will be less one, than as appearing in the first reprint version. For example, references to section 22 in the first reprint version read as references to section 21 in the second reprint version.

This substitute is identical to the Assembly Committee Substitute for Assembly Nos. 1811 and 2070.

SENATE COMMERCE COMMITTEE
STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1010, 811, and 1394
STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports without recommendation a Senate Committee Substitute for Senate, Nos. 1010, 811, and 1394.

This bill, a Senate Committee Substitute for Senate, Nos. 1010, 811 and 1394, enacts the "Construction Lien Law" and repeals the current "Mechanics' Lien Law." It provides that a contractor, subcontractor or supplier who provides work, services, material or equipment for use in the improvement of real property pursuant to a written contract, is entitled to a lien on the owner's interest in the real property for the value of the work or services performed, or materials or equipment furnished in accordance with the contract. The bill sets forth the procedure in which this lien will be attached for various types of improvements. No lien will attach for materials furnished or delivered subject to a security agreement pursuant to chapter 9 of the Uniform Commercial Code; or for public works or improvements to real property contracted for or awarded by a public entity.

A lien claim must be filed with the county clerk no later than 90 days following the date the last work, services, material or equipment was provided for which payment is claimed. A claimant will forfeit all rights to enforce a lien unless he brings an action in the Superior Court, in the county in which the real property is situated, to establish the lien claim within one year of the date of the last provision of work, services, material or equipment or within 30 days following receipt of written notice from the owner requiring the claimant to commence an action to establish the lien claim.

The amount of a lien is limited to the lesser of the contract price or any unpaid portion of the claimant's contract for the work, services, material or equipment provided.

Upon receipt of notice of a lien claim, the owner is 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 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 in writing within 20 days of service of the lien claim that the claimant is not owed the monies claimed and the reasons therefor.

An owner, contractor or subcontractor may obtain a discharge of a lien claim by paying the claimant or by executing and filing with the county clerk a surety bond in favor of the lien claimant in an amount equal to 110% of the amount claimed or depositing with the clerk of Superior Court funds constituting 110% of the amount claimed. If the claimant is paid, the right to challenge the lien is lost. However, if a surety bond is filed or funds deposited, the right to challenge the lien claim is maintained.

The bill provides that no lien claim may attach to the estate or interest acquired by a bona fide purchaser first recorded or lodged for record; nor may a lien claim enjoy priority over any mortgage, judgment or other lien first recorded, lodged for record, filed or docketed. In addition, a construction lien shall be subject to the effect of a notice of settlement. However, if a potential construction lien claimant files a Notice of Unpaid Balance prior to a creation, conveyance, lease or mortgage of an estate or interest in real property to which improvements have been made that are subject to the lien provisions of this bill, the claimant's lien claim filed against the owner's interest within 90 days of completion of the work, services, material or equipment delivered to the job site shall have priority over any prior creation, conveyance, lease or mortgage of an estate or interest in real property. After filing a Notice of Unpaid Balance, any person claiming title to, or an estate or interest in, or a lien upon, the real property described in the Notice of Unpaid Balance, would be deemed to have acquired the title, interest or lien with knowledge of the anticipated filing of a lien claim and would be subject to the terms, conditions and provisions of that lien claim within the applicable time restraints. The Notice of Unpaid Balance would be effective for 90 days from the date of the provision of the last work, services, materials or equipment for which payment is claimed. Failure to file a Notice of Unpaid Balance would not affect the claimant's lien rights arising under the provisions of this bill, to the extent that no creation, conveyance, lease or mortgage of an interest in real property has taken place prior to the filing of a Notice of Unpaid Balance or lien claim.

Every mortgage used for an improvement has priority as to the land or other interest in real property and any improvement.

All lien claims established by judgment are concurrent and will be paid pro rata out of the lien fund and the proceeds of the sale of the property to which the liens are attached.

A contractor or subcontractor, or both, must, within 10 days, provide the owner, upon his written request or pursuant to contract, with an accurate and full list of each subcontractor and supplier who may have a right to file a construction lien. This same requirement applies if a contractor requests such a list from a subcontractor. Reliance upon the list by the person requesting it is prima facie evidence establishing the bona fides of payment made in reliance thereon and constitutes an absolute defense to any claim that the party making such payment should have made additional inquiry to determine the identity of potential claimants.

The bill provides that waivers of construction lien rights are unenforceable.

Finally, the bill provides that the liens would be apportioned among various units of a condominium or corporation and for an accelerated procedure to test the validity of a lien and the accuracy of the amount of the lien.

1 SPONSOR'S STATEMENT
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3 This bill enacts the "Construction Lien and Trust Law" and
4 repeals N.J.S.2A:44-64 through 2A:44-141 inclusive and
5 N.J.S.2A:44-148, the "Mechanics' Lien Law" and portions of the
6 "Municipal Mechanics' Lien Law." It provides that any
7 contractor, subcontractor or supplier who provides work,
8 services, material or equipment for use in the improvement of
9 real property, or any subcontractor or supplier who provides
10 work, services, material or equipment for use in a public
11 improvement, pursuant to a contract, shall be entitled to a lien
12 for the value of the work or services performed, or materials or
13 equipment furnished, in accordance with the contract.

14 The bill sets forth the procedures by which this lien will attach
15 for various types of improvements. No lien will attach unless the
16 total amount owing exceeds the limits of the Special Civil Part of
17 the Law Division of the Superior Court (\$5,000.00); or for
18 materials furnished or delivered subject to a security agreement.
19 This bill also sets forth the form of the lien claim to be filed with
20 the county clerk or the appropriate officer of a public entity,
21 including the requirement that the claimant provide a detailed
22 breakdown of the basis for deriving the lien amount; the form of
23 notice to the owner of the real property, to the contractor or
24 subcontractor, as applicable; the claimant's representation and
25 verification; and an amended lien claim.

26 The bill permits a claimant to file a notice of lien at any time
27 during the progress of the work and the furnishing of the
28 materials or within 90 days following the date of substantial
29 completion of a claimant's contract. This time period applies
30 both to contracts for improvements to real property and for a
31 public improvement.

32 The bill requires that funds (1) received by an owner for or in
33 connection with an improvement of real property in this State,
34 including a home improvement loan; (2) received by a contractor
35 under or in connection with a contract for an improvement of
36 real property, or home improvement, or a contract for a public
37 improvement in this State; (3) received by a subcontractor under
38 or in connection with a subcontract made with the contractor for
39 the improvement of real property, including a home improvement
40 contract or public improvement, or made with any subcontractor
41 under any such contract; (4) received pursuant to a notice of
42 lending by an owner, contractor, or subcontractor; and (5) any
43 right of action for any such funds due or earned, or to become
44 due or earned, shall constitute assets of a trust.

45 The bill, by establishing such funds as assets of a trust: insures
46 that construction funding actually ends up going to suppliers,
47 subcontractors and contractors who work on the improvement;
48 provides for severe penalties and personal liability upon anyone
49 diverting these assets from their proper construction purposes;
50 eliminates the age-old problem of "pyramiding" in which
51 construction monies from one project are used to finance other
52 jobs; reduces the possibility of fraud by requiring separate
53 record-keeping for each construction project; and facilitates
54 honesty and fair dealing by allowing frequent examination and

1 copying of books and records dedicated to each construction
2 project.

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7 The "Construction Lien and Trust Law."

1 in damages to the owner or the contractor, or both, who suffer
2 damages as a result thereof.

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

8 38. The following are repealed:

9 N.J.S.2A:44-64 through 2A:44-124, inclusive; and
10 section 1 of P.L.1979, c.301 (C.2A:44-124.1).

11 39. This act shall take effect 120 days after enactment.

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SPONSOR'S STATEMENT

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16 This bill enacts the "Construction Lien Law" and repeals
17 N.J.S.2A:44-64 through 2A:44-124, the "mechanics' lien law". It
18 provides that any contractor, subcontractor or supplier who
19 provides work, services, material or equipment for use in the
20 improvement of real property pursuant to a contract, shall be
21 entitled to a lien for the value of the work or services performed,
22 or materials or equipment furnished in accordance with the
23 contract. The bill sets forth the procedure in which this lien will
24 attach for various types of improvements. No lien will attach for
25 materials furnished or delivered subject to a security agreement;
26 or for public works or improvements to real property contracted
27 for or awarded by a public entity. This bill also sets forth the
28 form of the lien claim to be filed with the county clerk and the
29 form of notice to the owner of the real property, to the
30 contractor or subcontractor, the claimant's representation and
31 verification and an amended lien claim.

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36 The "Construction Lien Law."

1 d. If an action to enforce a trust is commenced before the
2 completion or abandonment of the improvement of real property,
3 or home improvement, or public improvement, the judgment
4 therein may provide that under the circumstances equity requires
5 that distribution be deferred to await maturity of other trust
6 claims.

7 e. An action brought under this act shall not be compromised
8 or discontinued, nor dismissed by consent, by default or for
9 failure to prosecute, except with the approval of the court. On
10 any application for such approval, notice shall be given in the
11 manner as the court shall direct.

12 f. Trust claims entitled to share in any distribution of trust
13 assets pursuant to order of the court shall share pro rata.

14 58. Nothing in this act shall prevent the enforcement of any
15 lien as provided in this act and neither such lien nor any
16 satisfaction obtained thereby, shall be deemed a diversion of
17 trust assets or an unauthorized preference. For the purposes of
18 determining the share of any trust beneficiary upon any
19 distribution in an action to enforce the trust, the trust claim of a
20 trust beneficiary shall not be reduced by reason of any lien to
21 which he is entitled, or by reason of any rights under any bond to
22 which he is entitled by reason of his lien.

23 59. A person who fraudulently deprives a person entitled to the
24 benefits of this act, shall be liable to that person for any damages
25 resulting therefrom.

26 60. The entire controversy doctrine as provided in R.4:30A of
27 the Rules Governing the Courts of the State of New Jersey shall
28 not apply to actions brought under this act.

29 61. The following are repealed:
30 N.J.S.2A:44-64 through 2A:44-104, inclusive; N.J.S.2A:44-106
31 through 2A:44-148, inclusive; and
32 P.L.1979, c.301 (C.2A:44-124.1).

33 62. This act shall take effect 120 days after enactment and
34 shall apply to any improvement for which a construction permit is
35 issued on or after the effective date.

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38 *SPONSOR'S* STATEMENT

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40 This bill enacts the "Construction Lien and Trust Law" and
41 repeals N.J.S.2A:44-64 through 2A:44-104, inclusive;
42 N.J.S.2A:44-106 through 2A:44-148, inclusive; and P.L.1979,
43 c.301 (C.2A:44-124.1), the "Mechanics' Lien Law" and portions
44 of the "Municipal Mechanics' Lien Law." It provides that any
45 contractor, subcontractor or supplier who provides work,
46 services, material or equipment for use in the improvement of
47 real property, or any subcontractor or supplier who provides
48 work, services, material or equipment for use in a public
49 improvement, pursuant to a contract, shall be entitled to a lien
50 for the value of the work or services performed, or materials or
51 equipment furnished, in accordance with the contract.

52 The bill sets forth the procedures by which this lien will attach
53 for various types of improvements. No lien will attach (1) unless
54 the person filing the notice of lien has filed a notice of intent at

1 least 15 days prior to the time of filing a notice of lien, or (2) for
2 materials furnished or delivered subject to a security agreement.
3 This bill also sets forth: the form of the notice of intent and the
4 notice of lien, both of which are to be filed with the county
5 recording officer or the appropriate officer of a public entity, as
6 applicable, including in the notice of lien the requirement that
7 the claimant provide a detailed breakdown of the basis for
8 deriving the lien amount; the form of notice to the owner of the
9 real property, to the contractor or subcontractor, as applicable;
10 the claimant's representation and verification; and an amended
11 notice of lien.

12 The bill permits, with the proviso noted above concerning the
13 filing of a notice of intent, a claimant to file a notice of lien at
14 any time during the progress of the work and the furnishing of the
15 materials or within 90 days following the date of substantial
16 completion of a claimant's contract. This time period applies
17 both to contracts for improvements to real property and for a
18 public improvement.

19 The bill requires that funds (1) received by an owner for or in
20 connection with an improvement of real property in this State,
21 including a home improvement loan; (2) received by a contractor
22 under or in connection with a contract for an improvement of
23 real property, or home improvement, or a contract for a public
24 improvement in this State; (3) received by a subcontractor under
25 or in connection with a subcontract made with the contractor for
26 the improvement of real property, including a home improvement
27 contract or public improvement, or made with any subcontractor
28 under any such contract; and (4) any right of action for any such
29 funds due or earned, or to become due or earned, shall constitute
30 assets of a trust.

31 The bill, by establishing such funds as assets of a trust: insures
32 that construction funding actually ends up going to suppliers,
33 subcontractors and contractors who work on the improvement;
34 provides for severe penalties and personal liability upon anyone
35 diverting these assets from their proper construction purposes;
36 eliminates the age-old problem of "pyramiding" in which
37 construction monies from one project are used to finance other
38 jobs; reduces the possibility of fraud by requiring separate
39 record-keeping for each construction project; and facilitates
40 honesty and fair dealing by allowing frequent examination and
41 copying of books and records dedicated to each construction
42 project.

43 The bill requires that a notice of intent to file a lien be filed at
44 least 15 days before a notice of lien is actually filed and it
45 eliminates frivolous notices of liens being filed by requiring that
46 the person who files a notice of intent has to have done work,
47 performed service or supplied materials for which a bill has been
48 given and for which payment has not been received for at least 30
49 days before a notice of intent can be filed.

50 The bill provides that: (1) if there is a conveyance of an
51 interest in real property to which improvements have been made
52 and (2) the last work, services, material or equipment for which a
53 notice of lien may be filed were provided within 90 days of the
54 date of the conveyance, the conveying owner is responsible, to

1 the extent of the provisions of this act, for any lien filed within
2 the 90-day period.

3 The bill provides protection for a bonafide purchaser or other
4 person acquiring an interest for value in real property against last
5 minute notices of liens against the property. The purchaser
6 acquires the interest free and clear in one of two ways: (1) If the
7 interest acquired for value in real property is recorded prior to
8 the recording of the notice of lien; or (2) if the interest to be
9 acquired is recorded on a notice of settlement pursuant to
10 P.L.1979, c.406 (C.46:16A-1 et seq.) prior to the recording of the
11 notice of lien. The latter provides the purchaser with a 45 day
12 window of protection from the time a purchaser's attorney files
13 a notice of settlement to allow for the closing and actual
14 recording of the conveying instrument.

15 In addition the bill: (1) protects against fraudulent attempts to
16 eliminate lien claims by making invalid the filing of a notice of
17 settlement before substantial completion of the improvement;
18 and (2) makes sections 4 and 5 of the notice of settlement law
19 applicable, except that section 4 would not be applicable if the
20 instrument of conveyance did not contain the trust provisions of
21 section 18 of the "Construction Lien and Trust Act."

22

23

24

25

26 The "Construction Lien and Trust Law."

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.

REPLACE SECTION 36 TO READ:

36. (New section) A discharge, subordination or release of a lien claim or Notice of Unpaid Balance ¹and Right to File Lien¹ 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 ¹and Right to File Lien¹ shall be endorsed upon the margin of the record in the book where the original lien or Notice of Unpaid Balance ¹and Right to File Lien¹ is recorded stating that the discharge is filed and recorded, giving the date of filing and recording and setting forth the book and the page number where the discharge, or receipt of payment of the lien or order discharging the lien, is recorded.

Statement to Senate Amendments

STATEMENT

The amendments amend the Senate Committee Substitute for Senate Nos. 1010, 811, 1394, designed the "Construction Lien Law"
These amendments provide additional protection for residential owners by first requiring arbitration or permitting alternative dispute resolution in order to determine the validity and amount of a lien claim before it may be filed. They also limit the amount of residential construction liens which may be enforced to the amount of subsequent purchasers' equity in the property.

Handwritten notes on the left side of the page, partially obscured and illegible.

Microfilm is no clearer than this printout. This seems to say "And residential purchasers and sellers of residential real estate"
Statement to amendments proposed by Sen. Cardinale