



# the Advocate

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## Timing is Critical During the First Ninety Days of a Residential Lien Claim

If your company is engaged in residential construction, a basic understanding of the legal process during the first ninety days of a residential Construction Lien Claim under New Jersey law is essential. Without a basic understanding of the lien law, you are increasingly likely to miss a critical deadline making it impossible to perfect a legally valid construction lien, thereby losing what could have been your best opportunity for prompt payment of monies due.

### Residential or Commercial Project?

The first thing to be understood is that the rules governing residential and commercial projects are remarkably different in many respects. To determine whether your project is defined as "residential" under the lien law consider the following definition found at N.J.S.A. 2A:44A-2:

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

If your project is "residential" under this definition, the next thing you must understand is that the first ninety days following the "date of the provision of the last work, services, materials or equipment delivery for which payment is claimed" are critical. N.J.S.A. 2A:44-20(d).

In brief, during those ninety days the lien claimant must complete the following steps:

1. Prepare and File the Notice of Unpaid Balance
2. File a Demand for Arbitration under American Arbitration Association (AAA) Rules
3. Serve the Notice of Unpaid Balance, Demand for Arbitration and supporting documentation upon the interested parties
4. Obtain an Award from the AAA arbitrator permitting the filing of a Construction Lien
5. Prepare and File the Construction Lien
6. Serve the Construction Lien Claim upon the interested parties

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### Law Firm Briefs

#### Great Quotations ...

"One person with courage makes a majority."  
- Andrew Jackson

"Every production of genius must be the production of enthusiasm."  
- Benjamin Disraeli

I will now elaborate and provide the statutory citations for each of the six steps outlined above.

#### Step One - Prepare and File the NUB

The Notice of Unpaid Balance and Right to File Lien (or NUB as it is generally referred to) is a requirement of residential projects only. The NUB form to be used is stated in the statute at N.J.S.A. 2A:44A-20 (a). It must be filed with the County Clerk or Register where the project is located. The NUB form contains all of the particulars giving rise to the balance due and the relationships among the project participants.

Ideally, I recommend that the NUB be filed sometime between the 35th and 45th day following the last date of provision of work, services, materials or equipment for which payment is claimed. This will allow about 45 to 55 days for the other five steps to be completed before the 90 day period has expired.

#### Step Two - File a Demand for AAA Arbitration

Unless the parties have otherwise agreed in writing to an alternative dispute resolution mechanism, the claimant shall file a demand for arbitration and fulfill all requirements and procedures of the AAA to institute an expedited proceeding before a single arbitrator designated by the AAA. N.J.S.A. 2A:44A-21(b)(3).

What is often overlooked by many contractors is that the AAA arbitration required under the lien law does not result in a judgment and right to be paid. Rather, it results in the arbitrator making the following determinations: (a) whether the NUB was in compliance with section 20 of the act and whether service was proper under section 7 of the act; (b) the validity and amount of any lien claim which may be filed pursuant to the NUB; (c) the validity and amount of any liquidated or unliquidated setoffs or counterclaims to any lien claim which may be filed; and (d) the allocation of costs of the arbitration among the parties. N.J.S.A. 2A:44A-21(b)(4).

#### Step Three - Serve the NUB, Arbitration Demand and supporting documentation on the parties

Simultaneously with the service of the NUB, the lien claimant shall also serve a demand for arbitration upon the requisite project participants. N.J.S.A. 2A:44A-21(b)(3).

#### Step Four - Obtain the AAA Award

The arbitrator shall make his or her determinations within 30 days of receipt of the claimant's demand for arbitration by the AAA. That time period shall not be extended unless agreed to by the parties. If an alternative dispute mechanism is agreed to between the parties, such determination shall be made as promptly as ~~possible making due allowance for all time in and procedures set forth in this act.~~ N.J.S.A. 2A:44A-21(b)(6). To permit enough time for the 30 day arbitration period, as stated earlier I recommend the NUB be filed between the 35th and 45th day after the last date of provision of work, services, materials or equipment.

#### Step Five - Prepare and File the Lien Claim

Following a favorable ruling from the arbitrator, the Lien Claim must be filed with the county clerk or register not later than 90 days following the date the last work, services, material or equipment was provided for which payment is claimed. N.J.S.A. 2A:44A-6.

#### Step Six - Serve the Construction Lien Claim

Within 10 business days following the filing of a lien claim, the claimant shall, by personal service or registered or certified mail, return receipt requested, postage prepaid, serve or mail a copy of the lien claim as prescribed in section 8 of the act. N.J.S.A. 2A:44A-7.

The statutory citations and six steps described above are intended only as an outline and introduction. This article is not intended as a substitute for a full understanding of all requirements of New Jersey law.



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