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A BLUEPRINT FOR UNDERSTANDING AND DEALING WITH CONSTRUCTION LIEN CLAIMS

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The New Jersey Construction Lien Law (Lien Law)¹ strikes a careful balance between the rights of those who furnish labor, materials and equipment to enhance the value of property of others, and the rights of the owners of such property. Thus, on the one hand, the Lien Law was intended to provide effective payment security (a construction lien filed against the owner's property) to certain persons who furnish labor, materials or equipment for the improvement of property for the value of the work or services performed. On the other hand, the Lien Law incorporates provisions that ensure that the owner of such property is not compelled to pay twice for the same work, services, materials or equipment when a valid lien claim is filed.² The Lien Law is to be read sensibly with an understanding of these dual underlying policies.

1. Who May File a Lien Claim?

The persons who may file construction liens under the Lien Law are limited to certain defined "contractors," "subcontractors," and "suppliers." A "contractor" includes any person who provides work, services, materials or equipment pursuant to a contract directly with the owner of the property being improved, which typically would include general contractors, licensed architects, engineers, land surveyors and professional planners, construction managers, prime

contractors on a multiple prime project and direct suppliers.³ A "subcontractor" includes any person who provides work, services, materials or equipment pursuant to a contract directly with a contractor, or pursuant to a contract with a subcontractor in direct privity of contract with a contractor, **which includes second and third "tier" subcontractors, but not fourth or lower "tier" subcontractors.**⁴ A "supplier" includes any person furnishing material or equipment, including rental equipment, having a contract directly with an owner or a contractor, or with a subcontractor in direct privity of contract with a contractor, **which means that suppliers to suppliers and suppliers to fourth or lower "tier" subcontractors are not entitled to file construction liens under the Lien Law.**⁵ To assist owners and contractors to identify all subcontractors and suppliers who may have lien rights, the Lien Law allows them to demand, in the written contract/ subcontract, or in writing at any time after commencement of performance, a verified list of the names and addresses of all subcontractors and suppliers who would be entitled to file a lien claim.⁶

2. What Amount Can be Claimed in a Valid Lien Claim?

The Lien Law strictly limits the amount of a lien claim to the lesser of the contract price, or any unpaid portion of the contract

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price, of the claimant's contract for the work, services, material or equipment provided.⁷ A contract requires a signed writing evidencing the respective responsibilities of the contracting parties, and any amendment to the contract also must be set forth in a signed writing.⁸ The contract price is the amount specified in a contract for the provision of work, services, material or equipment, which may be fixed or variable, including unit or cost-plus pricing.⁹ **This means that any lien claim that is based on or includes amounts for unsigned change orders, or other amounts that are not included in the contract price of a signed written contract or signed written amendment thereto, such as any amounts on account of claims for differing site conditions, unforeseen subsurface conditions or lost profits or other damages for delay, is improper and overstated.**¹⁰ A party who files a lien claim that is “willfully overstated” is subject to forfeiture of that claim, is prohibited from filing any subsequent lien claims based on the work, services, material or equipment claimed within the forfeited lien claim, and also is subject to liability for all court costs and reasonable attorneys' fees incurred by the owner or a contractor or subcontractor in defending against and/or causing the discharge of the willfully overstated claim.¹¹

3. The “Lien Fund”

Owners (and contractors) are protected from paying twice for the same work, services, materials or equipment by the incorporation of the concept of a “lien fund” into the Lien Law. Although the particular statute creating and describing the lien fund is not a model of clarity beyond the lien fund applicable to a lien claim filed by the contractor (generally the unpaid balance of the contract price at the time of receipt of the lien), it has been judicially construed such that in the case of a lien claim filed by a “second-tier” subcontractor or supplier, the amount due to the claimant from the contractor at the time of service of the lien claim is compared to the amount due from the owner to the contractor, and the lesser sum is the amount of the lien fund. In the case of a lien claim filed by a “third-tier” subcontractor or supplier, the amount due to the claimant from the “second-tier” subcontractor at the time of service of the lien claim is compared to the amount due to the “second-tier subcontractor” from the contractor, and the lesser sum is then compared to the amount due to the contractor from the owner, with the lesser sum from the second comparison constituting the amount of the lien fund.¹²

To further illustrate, if, at the time of service of a supplier's lien claim the owner owes the contractor \$30,000, the contractor owes its subcontractor \$25,000, and that subcontractor owes the

claimant \$40,000, the lien fund applicable to the supplier's lien claim is limited to \$25,000. However, if the owner had owed the contractor nothing at the time of service, the lien fund applicable to the supplier's lien claim would have been zero. **The significance of this is that the lien fund establishes the maximum amount for which an owner will be liable or his property subject to a lien for a filed construction lien claim, and every payment made by the owner in good faith prior to receipt of a valid lien claim reduces the lien fund.**¹³

Retainage is included in the calculation of the lien fund, whether or not the contractor remains on the job.¹⁴ However, if the contract does not provide for retainage and the contractor abandons the job at a time when all progress payments have been made by the owner for work completed, there is no lien fund available to a supplier who subsequently files a construction lien.¹⁵ If an owner knowingly or unknowingly advances payments to the contractor that were not yet earned and due under the terms and conditions of their contract before a subcontractor or supplier lien claim is filed, such payments are added back in for purposes of calculating the lien fund.¹⁶ The same result would be obtained if an owner continued to make payments to a contractor after service of a subcontractor or supplier lien claim, as to that lien claim, at least if no lien bond has been filed.¹⁷ An owner also

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cannot reduce the lien fund by assessing contractual liquidated damages against the contractor after a subcontractor lien claim has been filed and where the contractor, rather than the subcontractor, was responsible for the delays.¹⁸ The lien fund applicable to each lien claim must be determined as of the filing of each claim, and a subsequent lienor cannot claim any benefit from an earlier filed lien claim.¹⁹

4. What Happens After Service of a Lien Claim?

Upon receipt of a lien claim, the owner “shall be authorized to” withhold and deduct the amount claimed from the unpaid balance of the contract price that is or may become due and payable to the contractor.²⁰ Alternatively, the owner may pay the amount of the lien claim to the claimant, unless the contractor or subcontractor against whose account the lien was filed notifies the owner in writing within 20 days of service of the lien claim that the claimant is not owed the sums claimed and the reasons why not.²¹ Such objections may address the timeliness or validity of the lien claim itself, the quality of the work or services provided by the claimant or other defenses to payment arising out of the contract between the contractor or subcontractor and the claimant.²² If no timely written objections are received, the owner may pay the amount of the lien claim to the claimant, in which event such payment shall be deemed “on account” of the

contract price of the contractor or subcontractor against whose account the lien was filed, and deducted from the balance of payments due and owing or to become due and owing thereunder.²³

In any event, the owner may release his property from the lien by posting a bond (or requiring the contractor or subcontractor against whose account the lien was filed to post a bond) in the amount equal to 110% of the lien claim amount, plus \$25.00, conditioned upon payment of any judgment and costs that may be recovered by the claimant on account of the lien claim.²⁴ If the lien claim has been paid, the claimant must discharge the claim of record within 30 days, in failure of which the claimant is subject to liability for all court costs and reasonable attorneys' fees incurred by the owner or other party to obtain discharge of the lien claim in a judicial proceeding.²⁵ If the lien claim has not been paid or bonded, the claimant must file an action to establish and enforce the lien claim within one (1) year of the date of provision of the work, services, materials or equipment that are the subject of the lien claim; provided, however, that the owner may compel the claimant to initiate such action within 30 days of receipt of written notice demanding same.²⁶ Upon initiation of such action, the claimant must join the contractor or subcontractor who failed to make payments to the claimant for which the lien claim was filed and any other party

having an interest in the property that would be adversely affected by a judgment in the claimant's favor, which would include inter alia the owner, mortgagees and other lien claimants.²⁷ Failure of the claimant to institute an action within the applicable time period results in a forfeiture of the lien claim.²⁸ If the lien claim is forfeited, the claimant must discharge it of record within 30 days, in failure of which the claimant will be subject to liability as noted above.²⁹

5. Special Rules Apply to Residential Construction.

Special rules apply to liens for work, services, materials or equipment furnished under a “residential construction contract”, which includes any signed written agreement for the construction of or improvement to a one or two family dwelling or any portion thereof, and residential units in condominiums, housing cooperatives, fee simple townhouse developments, horizontal property regimes and planned unit developments.³⁰ The Legislature has decreed that it is essential for the preservation and enhancement of the State's economy for families to be able to purchase homes without undue delay or uncertainty and for lending institutions to be able to conduct their business in a stable environment to lend money for the purchase or finance of home construction or improvements. Finding that the construction of each unit of residential housing generally involves numerous subcontractors and suppliers, and

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that the potential for a multiplicity of lien claims involving even minor monetary disputes posed a serious impediment to the expeditious transfer of title to residential housing, the Legislature concluded that a different treatment of residential real estate was required as it relates to the rights of contractors, subcontractors and suppliers to file liens to secure the value of their work, services, materials or equipment furnished to construct or improve residential housing.³¹ Accordingly, Section 21b of the Lien Law imposes the following **additional** requirements as conditions precedent to the filing of any lien claim for work, services, materials or equipment furnished pursuant to a residential construction contract, **all of which must be satisfied within ninety (90) days after the date when the last work, services, materials or equipment was provided for which payment is claimed:**

(a) The claimant must file and serve a statutory form of Notice of Unpaid Balance and Right to File Lien (NUB)³²

(b) simultaneously with service of the NUB, the claimant must serve a demand for arbitration and thereafter satisfy all of the requirements and procedures of the American Arbitration Association to institute an expedited proceeding before a single arbitrator designated by the Association³³;

(c) the arbitrator must determine, within thirty (30) days of the Association's receipt of the claimant's demand for

arbitration (which may not be extended absent agreement of the parties), the validity of the amount and service of the NUB, the validity and amount of any lien claim that may be filed pursuant to the NUB, the validity and amount of any liquidated or unliquidated setoffs to such lien claim, and the appropriate allocation among the parties of the costs of the arbitration³⁴;

(d) if the arbitrator determines that the claimant is entitled to an affirmative lien claim, the claimant must, within ten (10) days of receipt of the determination, **and still within ninety (90) days after the date when the last work, services, materials or equipment was provided for which payment is claimed**, file and serve such lien claim and also post any bond or other security required by the arbitrator, in failure of which the lien claim shall be rendered invalid.³⁵

These additional requirements placed on a person seeking to file a lien claim arising out of a residential construction contract are onerous, **and are strictly construed and applied.** Since a subcontractor or supplier typically must wait 30-60 days from the time that work, services, materials or equipment were furnished for payment, the time periods allotted for these additional conditions precedent to a valid lien claim are very tight. While the Lien Law is generally to be read sensibly and with an understanding of its dual underlying policies, no lien may

attach for any work, services, materials or equipment furnished pursuant to a residential construction contract unless there is "strict compliance" with these additional requirements.³⁶ Even when a claimant complies with these additional requirements, if the aggregate amount of all lien claims arising out of a residential construction contract exceeds the amount due under a residential purchase agreement for the residential unit (the net proceeds of the amount paid under such agreement, less the sum of previously recorded mortgages and liens other than construction liens and any required recording fees), then upon entry of judgment of all of such lien claims each claim will be reduced pro rata.³⁷ A subcontractor or supplier on a residential housing construction project may eschew its lien rights and pursue its common law remedies, including damages for breach of contract, which presumably are not lost even if a lien claim is forfeited for failure to strictly comply with the additional requirements of Section 21 of the Lien Law.³⁸

Even after a lien claim arising out of a residential construction contract is fixed by arbitration, timely filed and attaches to residential real estate, special rules apply to mitigate the effect of the lien on the sale of individual residential units. Once the lien attaches, the claimant must release a "proportionate share" of the interest in the residential real estate from the lien upon receipt of payment for

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that proportionate share, as opposed to payment of the full amount of the lien claim.³⁹ Failure to release the proportionate share subjects the claimant to liability for all court costs and reasonable attorneys' fees incurred by the owner to obtain release of the lien to the extent of that proportionate share.⁴⁰ If the work performed by the claimant was for a condominium or cooperative in which a master deed or master declaration was filed before the lien attached, the Lien Law provides that the proportionate share shall be allocated in an amount equal to the percentage of common elements attributable to each unit.⁴¹ In all other instances, the claimant need not release the lien as to any portion of the residential real estate unless (i) the residential construction contract or some other signed written agreement existing as of the time the lien attached provides for an allocation by lot or tract, in which event that allocation of the proportionate share shall be binding upon the lien claimant; or (ii) the lien claimant and the owner agree to the allocation of a proportionate share in a signed writing after the lien attaches.⁴² Since a claimant cannot be compelled to agree to an allocation after the lien attaches, and has little incentive to do so, it is important for an owner to be proactive and address the allocation of the proportionate share in the residential construction contract.⁴³ **If the allocation has been addressed**

in the residential construction contract, the owner will be able to transfer title to each unit upon payment of the proportionate share allocated to that unit; otherwise, the owner will have to pay, bond or otherwise secure the entire amount of the lien claim to release all of its property from the lien in order to transfer title to any unit.

6. What Happens When the Owner Files for Bankruptcy?

When a debtor files for bankruptcy relief, Section 362(a)(4) of the Bankruptcy Code generally stays "any act to create, perfect or enforce any lien against property of the [debtor's] estate."⁴⁴ Section 362(b)(3) creates an exception to such automatic stay, and allows any act to perfect, or to maintain or to continue the perfection of an interest in the debtor's property to the extent that the trustee's rights and powers, including its avoidance powers under Section 545, are subject to such perfection under Section 546(b).⁴⁵ Under Section 545, the trustee may avoid the fixing of a statutory lien on the debtor's property to the extent that such lien "is not perfected or enforceable at the time of commencement of the case."⁴⁶ However, such avoidance powers are subject to Section 546(b), which allows a creditor to continue post-petition perfection of an interest in property that attached pre-petition notwithstanding the automatic stay provisions of Section 362(a)(4).⁴⁷ **In short, the**

Bankruptcy Code draws a distinction between the post-petition perfection of a lien that attached to the debtor's property pre-petition, which is permitted, and the post-petition creation or attachment of a lien, which is not permitted. Thus, with respect to a non-residential lien claim, a lien claim that attached by a filing pre-petition may be perfected by the claimant by the filing of a post-petition action to enforce the lien claim, but such a lien claim cannot be attached by a filing post-petition (at least if there has been no pre-petition filing of an NUB).⁴⁸ In the case of a residential lien claim, if the claimant filed the NUB and obtained a favorable decision from the arbitrator fixing the amount of a valid lien claim pre-petition, then a post-petition filing of the lien claim will be allowed because it is deemed to relate back to the pre-petition filing of the NUB.⁴⁹

If you would like more information about construction liens, have any questions about this article, or would like to discuss any other construction law related issues or matters, please contact Vincent J. Paluzzi at vpaluzzi@sternslaw.com or 609.989.5033.

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footnotes

¹N.J.S.A. 2A:44A-1 et seq. The Lien Law became effective April 22, 1994.

²See, e.g., Thomas Group, Inc. v. Wharton Senior Citizen Housing, Inc., 163 N.J. 507 (2000), and Triple "R" Enterprises, Inc. v. Pezorti, 344 N.J.Super. 31 (App. Div. 2001). Waivers of construction lien rights are deemed to be against public policy and are unlawful and void, unless given in consideration for payment for the work, services, material or equipment provided or to be provided, and even then, such waivers are effective only upon and to the extent that payment is actually received. N.J.S.A. 2A:44A-38. However, since every payment made by the owner in good faith prior to receipt of a valid lien claim reduces the "lien fund" available to lien claimants (see text, Point 3), the owner is protected to the extent of such payments even in the absence of receipt of such contingent releases/waivers from persons entitled to file a construction lien claim.

³N.J.S.A. 2A:44A-2 (definition of "contractor").

⁴Id. (definition of "subcontractor").

⁵Id. (definition of "supplier").

⁶N.J.S.A. 2A:44A-37. If the owner or contractor relies upon such list and makes payments to other parties that include amounts due for the work of a subcontractor or supplier omitted from the list, the "lien fund" available to the omitted subcontractor or supplier is reduced by such payments. N.J.S.A. 2A:44A-37d. See also, discussion of the "lien fund" in Point 3 of the text, *infra*. A contractor or subcontractor who does not furnish the verified list within ten (10) days of written request, or who omits subcontractors or suppliers from the list, is directly liable to the party requesting the list and/or the owner for damages, including costs and attorney's fees incurred to defend or discharge a lien claim asserted by a subcontractor or supplier omitted from the list. N.J.S.A. 2A:44A-37e.

⁷N.J.S.A. 2A:44A-9. In addition, the lien claim must be in the required statutory form, and it must be served upon the record owner and the contractor or subcontractor against whose account the lien is asserted, by personal service or postage prepaid registered or certified mail, return receipt requested, within ten (10) business days of filing. N.J.S.A. 2A:44A-7 and -8.

⁸N.J.S.A. 2A:44A-2 (definition of "contract")

⁹Id. (definition of "contract price").

¹⁰See, e.g., Stroud-Hopler, Inc. v. Farm Harvesting Co., Inc., 2005 WL 3693342 (App. Div. 2006). Remedies for such claims must be pursued outside the Lien Law.

See, N.J.S.A. 2A:44A-3.

¹¹N.J.S.A. 2A:44A-15a and -c.

¹²See, Labov Mechanical v. East Coast Power, 377 N.J. Super. 240 (App. Div. 2005). However, it is an open question whether the lien fund may be reduced by an assessment of liquidated damages for delay by the owner against the party responsible for the delay prior and/or subsequent to the filing of a lien claim by that party. Refining Co., 2005 WL 2897483 (D.N.J. 2005).

¹³N.J.S.A. 2A:44A-10. For this reason, written waivers/releases of lien rights (which must be conditioned upon receipt of payment in order to be valid and enforceable under the Lien Law) from potential lien claimants are not necessary to protect the owner's rights. See note 2, *supra*.

¹⁴See Legge Industries v. Joseph Kushner Hebrew Academy/JKHA, 333 N.J.Super. 537 (App. Div. 2000).

¹⁵See, Craft v. Stevenson Lumber Yard, 179 N.J. 56 (2004).

¹⁶See, AEH Holdings v. Tri-Gem Builders, 347 N.J.Super. 511 (App. Div. 2002).

¹⁷See, N.J.S.A. 2A:44A-12; Craft v. Stevenson Lumber Yard, *supra*, 179 N.J. at 69-70. See also, N.J.S.A. 2A:44A-36.

¹⁸See, Labov Mechanical v. East Coast Power, 377 N.J. Super. 240 (App. Div. 2005). However, it is an open question whether the lien fund may be reduced by an assessment of liquidated damages for delay by the owner against the party responsible for the delay prior and/or subsequent to the filing of a lien claim by that party.

¹⁹See, Triple "R" Enterprises, *supra*, 344 N.J. Super. at 36-37.

²⁰N.J.S.A. 2A:44A-12. As discussed in Point 3 of the text, *supra*, if the owner continues to pay a contractor after receipt of a valid subcontractor or supplier lien claim, such payments are subject to recapture for purposes of computing the lien fund with respect to that lien claim, at least where no lien bond has been posted.

²¹*Ibid.*

²²In order to be timely, a lien claim must be filed not later than 90 days after the date the last work, services, materials or equipment was provided for which payment is claimed. N.J.S.A. 2A:44A-6. Warranty or other service calls, or other work, materials or equipment provided after completion or termination of a claimant's contract may not be used to compute the said 90-day period. *Ibid.* See also, discussion in Point 2 of the text, *supra*, concerning the amount that may be claimed in a construction lien claim and the consequences of willful overstatement.

²³N.J.S.A. 2A:44A-12.

²⁴N.J.S.A. 2A:44A-31 and -32. In lieu of a bond, the Lien Law also allows for a cash deposit in the amount of 110% of the amount claimed, plus \$25.00, as security for payment of any judgment and costs that may be recovered by the claimant on account of the lien claim. When the bond, deposit or any combination thereof is properly filed/deposited, the property described in the lien claim is automatically released and discharged from the lien. N.J.S.A. 2A:44A-32.

²⁵N.J.S.A. 2A:44A-30.

²⁶N.J.S.A. 2A:44A-14a (1) and -(2). It is a common misunderstanding that the one (1) year period runs from the date of filing of the lien claim. That is not correct.

²⁷N.J.S.A. 2A:44A-16a.

²⁸*Ibid.* Even if the lien claim is forfeited, a claimant would still retain the right to pursue other remedies, including damages for breach of contract. See, Craft v. Stevenson Lumber Yard, *supra*, 179 N.J. at 76-77.

²⁹N.J.S.A. 2A:44A-14b; N.J.S.A. 2A:44A-30.

³⁰N.J.S.A. 2A:44A-2 (definition of "residential construction contract"). Since the definition includes "improvements" to residential dwellings, remodelers and other home improvement contractors are subject to these special provisions.

³¹N.J.S.A. 2A:44A-21a.

³²N.J.S.A. 2A:44A-21b(1) and -(2). Outside of residential construction, the filing of a NUB is optional, and even if filed, a NUB need not be served on any party. See, N.J.S.A. 2A:44A-20. A filed NUB causes a timely lien claim subsequently filed by the same party to "relate back" to the date of filing of the NUB for purposes of establishing priority over any mortgages, lien claims or other liens that may have attached to the property in the intervening time between the two filings. *Ibid.* See also, Sovereign Bank v. Silver Line Holdings Corp., 368 N.J. Super. 1 (App. Div. 2004). See also discussion in Point 6 of the text, *infra*, concerning the effect of a NUB when the owner's bankruptcy intervenes between the filing of the NUB and the filing of a lien claim. Otherwise, a lien claim attaches to the owner's property only as of the date that it is filed. N.J.S.A. 2A:44A-10. In the case of residential construction, if the NUB is determined to be without basis, "significantly" overstated (as opposed to "willfully" overstated, as in the case of lien claims generally), not filed in the required statutory form or not properly served, the claimant is subject to liability for all damages suffered by the owner or any other adversely affected party, including all court costs and reasonable attorneys' fees. N.J.S.A. 2A:44A-21b (12).

³³N.J.S.A. 2A:44A-21b (3).

³⁴N.J.S.A. 2A:44A-21b (4), -(6). Setoffs will typically be based on allegations that the claimant's work was deficient or untimely. If the arbitrator cannot fix the amount of any unliquidated setoffs, as a condition precedent to the filing of any lien claim, the lien claimant will be ordered to post a bond or other security with an appropriate person or entity in an amount equal to 110% of the approximate fair and reasonable value of such setoffs as determined by the arbitrator, but in no event in excess of the amount of the lien claim that may be filed pursuant to the arbitrator's findings. N.J.S.A. 2A:44A-21b (5).

³⁵N.J.S.A. 2A:44A-21b (8). Any contractor, subcontractor or supplier whose interests are affected by the filed NUB may join in the arbitration: *provided, however*, that the rights of such parties may be determined by the arbitrator only to the extent they are affected by the filed NUB. N.J.S.A. 2A:44A-21b (7). If the claimant or the owner is aggrieved by the arbitrator's determination, the determination may be appealed to the Superior Court, Law Division in a summary action, but any decision on the appeal shall be rendered with "due regard to the time limits. . . set forth in this act." N.J.S.A. 2A:44A-21b (10).

³⁶N.J.S.A. 2A:44A-5c.

³⁷N.J.S.A. 2A:44A-21b (13). In such cases, each lien claimant's share is equal to the amount of its lien claim multiplied by a fraction, the numerator of which is the amount of its lien claim and the denominator of which is the total amount of all lien claims for which judgment has been entered.

³⁸See, N.J.S.A. 2A:44A-3 and Craft v. Stevenson Lumber Yard, *supra*, 179 N.J. at 76-77.

³⁹N.J.S.A. 2A:44A-18.

⁴⁰N.J.S.A. 2A:44A-18d; N.J.S.A. 2A:44A-30.

⁴¹N.J.S.A. 2A:44A-18b. However, for work performed solely within a condominium or cooperative unit, the lien attaches only to the interest of the owner of the unit. See N.J.S.A. 2A:44A-19a.

⁴²N.J.S.A. 2A:44A-18a, and -c.

⁴³For example, the residential construction contract may allocate the proportionate share per home/unit or lot according to a fraction, the numerator of which is the amount of the claimant's lien claim, as fixed by the arbitrator, and the denominator of which is the total number of homes/units or lots comprising the project or within claimant's scope of work, as the case may be.

⁴⁴11 U.S.C. 362(a)(4).

⁴⁵11 U.S.C. 362(b)(3).

⁴⁶11 U.S.C. 545 (2).

⁴⁷11 U.S.C. 546(b).

⁴⁸See In re Enron Corp., 294 B.R. 232 (Bkrtcy, S.D.N.Y. 2003) (applying New Jersey Lien Law).

⁴⁹See In re Kara Homes, Inc., 374 B.R. 542 (Bkrtcy, D.N.J. 2007).