

AAA New Jersey Residential Construction Lien Arbitration Rules

Rules Amended and Effective March 1, 2012

Introduction

New Jersey P.L. 2010, c.119, the “Construction Residential Lien Law” (revision of N.J.S.A. 2A:44A-1, et seq.) provides a statutory scheme for private contractors, subcontractors, and suppliers to secure payment for their labor and materials on residential projects through a lien filing process. Part of the residential lien process requires arbitration through the auspices of the American Arbitration Association (AAA), unless the parties provide for an alternate dispute resolution mechanism. The purpose of the arbitration is to establish an efficient and fair process for determining the validity and amount of a lien claim. The AAA New Jersey Residential Construction Arbitration Rules have been developed specifically for this purpose.

Important Information

Role of the AAA in the New Jersey Residential Lien Law process:

The AAA is a private, not-for-profit, neutral administrative organization. The AAA does not provide legal advice or serve as a representative for any party.

The AAA staff provides neutral, administrative services to the parties and the assigned arbitrator. The services include:

- Answering questions specific to the AAA New Jersey Residential Construction Lien Arbitration Rules and administrative process
- Appointing the arbitrator
- Serving as liaison between the parties and the arbitrator
- Communicating information pertaining to arbitration deadlines and hearing dates
- Scheduling of the hearing, should an in-person hearing be necessary
- Transmitting to the arbitrator the parties’ documentation in support of claims, counterclaims, set-offs, or defenses
- Transmitting the final arbitration award to the parties

Please read the Rules thoroughly

A Frequently Asked Questions and Answers (FAQ) document is provided as an addendum to these Rules.

The following topics are not part of the AAA arbitration process established by the Lien Law and, as such, AAA staff cannot provide guidance or information with respect to these items:

Questions about interpretation of the law, including but not limited to:

- Rights and obligations under the statute
- Deadlines for filing a lien
- Where and how to file a Notice of Unpaid Balance and Right to File Lien (NUB)
- Filing of the arbitration award with the country clerk's office
- How to vacate, modify, or correct an arbitrator's award

Please note that the New Jersey legislature did not authorize or appoint the AAA to provide education about the Lien Law. Listed here are resources to help you find additional information about the law:

New Jersey Legislature website where one can find P.L. 2010, c119 under Chapter Laws:

http://www.njleg.state.nj.us/2010/Bills/PL10/119_.PDF

New Jersey Law Revision Commission website, for information regarding the Commission's reports and legislative history of the revised law:

www.njlrc.org

Residential Construction & Renovation: A Legal Guide for New Jersey Homeowners:

http://www.njsbf.org/images/content/1/1/11091/construction_final.pdf

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1. NEW JERSEY RESIDENTIAL CONSTRUCTION LIEN ARBITRATION RULES

The New Jersey Construction Lien Law (P.L. 2010, Chapter 119 - "Lien Law") provides that as a condition precedent to the filing of any lien arising under a residential construction contract, the lien claimant shall first file and serve a Notice of Unpaid Balance and Right to File Lien ("NUB").

Within 10 calendar days from the date the NUB is lodged for record, the lien claimant is also required to serve a Demand for Arbitration and fulfill all of the requirements and procedures of the American Arbitration Association to institute an expedited proceeding before a single arbitrator designated by the AAA, unless the parties have otherwise agreed in writing to an alternate dispute resolution mechanism.

These arbitration rules and any amendment of them shall apply in the form in effect at the time the administrative requirements for the Demand for Arbitration under the Lien Law are met and received by the AAA, except for any provision that may be inconsistent with applicable law.

2. DOCUMENT SUBMISSION OR ORAL HEARING

All cases will be determined by the arbitrator by document submission only (called "Desk Arbitration"), unless a party makes a timely request for an oral hearing before the arbitrator and has paid any oral hearing fees. The arbitrator shall have the discretion to resolve any disputes with regard to the timeliness of a request for an oral hearing.

3. INITIATION OF EXPEDITED ARBITRATION PROCEEDING

Arbitration is initiated by the filing with the AAA of two (2) copies of a Demand for Arbitration, including two (2) copies of the documentation described below and payment of the appropriate filing fees (see AAA Fee Schedule).

The claimant shall simultaneously, by personal service or registered or certified mail-return receipt requested, postage prepaid, serve or mail a copy of the Demand for Arbitration, including the required documentation, to the last known business address or place of residence of the property owner and, if any, of the contractor and the subcontractor, against whom the claim is asserted.

The Demand shall include the following, in order to fulfill the filing requirements of the AAA to

institute an expedited proceeding under the Lien Law:

- (1) the appropriate filing fee, to be paid to the AAA (see AAA Fee Schedule);
- (2) two (2) copies of the completed and signed NUB;
- (3) two (2) copies of proof of service of the Demand for Arbitration and NUB. Proof of service of the NUB is either a copy bearing the date and time stamp of the clerk's office or an affidavit provided by the claimant showing the NUB has been lodged for record;
- (4) the name and last known business address or place of residence of the property owner and, if any, of the contractor and the subcontractor, against whom the claim is asserted, and the email addresses and telephone numbers, if known;
- (5) the names, addresses, email addresses and telephone numbers of representatives of the parties, if known;
- (6) a statement of whether the claimant requests an oral hearing with the arbitrator, and a list of the names and business affiliations of witnesses the claimant may call at the oral hearing;

If claimant requests an oral hearing, the Oral Hearing Fee must be paid at the time of filing (see AAA Fee Schedule);

(7) if the claimant does not request an oral hearing, claimant shall attach two (2) copies of all documents that claimant wishes to submit to the arbitrator for determination of the claim;

(8) if the claimant seeks consolidation, such request must be included with the Demand. See Section 8 of these Rules.

The AAA shall not be required to proceed with administration of the claim if the AAA determines that the Demand does not fulfill the administrative filing requirements.

The arbitrator shall resolve any disputes regarding the timeliness of the Demand for Arbitration.

4. ARBITRATOR APPOINTMENT

Upon receipt of a Demand for Arbitration, the AAA shall appoint a single arbitrator from its panel of persons knowledgeable in construction.

5. DISCLOSURE

(a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, shall disclose to the AAA, as promptly as practicable, any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.

(b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.

(c) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section 5 is not to be construed as an indication that the arbitrator considers that the disclosed circumstances are likely to affect impartiality or independence.

6. DISQUALIFICATION OF ARBITRATOR AND VACANCIES

(a) An arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and may be subject to disqualification for:

- (i) Partiality or lack of independence,
- (ii) Inability or refusal to perform his or her duties with diligence and in good faith, and
- (iii) Any grounds for disqualification provided by applicable law.

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

(c) The AAA is authorized to remove the arbitrator and to appoint another arbitrator if a vacancy occurs for any reason.

7. OATHS

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

8. CONSOLIDATION

In accordance with the Lien Law, the claimant, owner, or any other party may request consolidation in a single arbitration proceeding of the claimant's NUB with any other NUB not yet arbitrated but lodged for record by a potential claimant who has satisfied the requirements of the Lien Law.

Requests for consolidation made by the claimant must be made in the Demand for Arbitration. If a person other than the claimant seeks consolidation, the request shall be made by letter to the AAA within five (5) business days of when the Demand for Arbitration is served.

The arbitrator shall grant or deny a request for a consolidated arbitration proceeding at the arbitrator's discretion. Such determination shall be made no later than five (5) business days from the date the request is submitted to the arbitrator.

9. AMENDMENTS TO THE DEMAND

After filing of the arbitration, the Demand may only be amended with written consent of all parties, or with the consent of the arbitrator.

10. ANSWER, SETOFF AND COUNTERCLAIM

The AAA will acknowledge to the parties receipt of the Demand for Arbitration. Within five (5) business days of notice from the AAA that it is proceeding with administration of the claim, a respondent against whom a claim is asserted:

- (a) may file an Answer in writing by serving two (2) copies of same on the AAA and one (1) copy on each party;
- (b) may file a Setoff or Counterclaim, by serving two (2) copies of the same on the AAA and one (1) copy on all other parties in writing, accompanied by the appropriate filing fee to be paid to the AAA (see AAA Fee Schedule);
- (c) may, if claimant did not request an oral hearing, make a request for an oral hearing by serving same on the AAA and on all other parties in writing, and include the names and business affiliations of witnesses the respondent may call at the oral hearing, accompanied by an Oral Hearing Fee, to be paid to the AAA (see AAA Fee Schedule);
- (d) shall, if an oral hearing is not requested by any party, serve two (2) copies on the AAA and one (1) copy on all other parties of all documents that respondent wishes to submit to the arbitrator.

Submissions pursuant to this Section should be received by the AAA within five (5) business days of the date of the AAA's written notice.

11. CLAIMANT'S REPLY

Claimant may submit a written reply by (a) serving two (2) copies on the AAA, which should be received by the AAA within three (3) business days of the date of the AAA's written notice, and (b) serving a copy on each party.

If a respondent submits a Setoff or Counterclaim in a document submission case and respondent did not request an oral hearing, claimant's reply may include a request for an oral hearing, accompanied by the Oral Hearing Fee, to be paid to the AAA (see AAA Fee Schedule).

12. TIME STANDARDS

The arbitration proceeding shall be completed within thirty (30) calendar days of receipt of the claimant's Demand for Arbitration by the AAA unless no response is filed, in which case the arbitration proceeding shall be completed within seven (7) calendar days after the time within which to respond has expired.

The time periods for completion of the arbitration shall not be extended unless agreed to by the parties and approved by the arbitrator.

13. REPRESENTATION

Any party may participate without representation (pro-se), or by counsel or any other

representative of that party's choosing, unless such choice is prohibited by applicable law. A party intending to have representation shall notify the other party and the AAA of the name, telephone number and address, and email address, if available, of the representative at least five (5) business days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

14. DATE, TIME AND PLACE OF ORAL HEARING

When an oral hearing is requested, the arbitrator shall fix the date and time of the hearing, which may be at any reasonable time on any day of the week in order to meet the time limitations of the Lien Law.

The hearing will be held at the business offices of the arbitrator or such other place as the arbitrator may designate, which may include the business offices of one of the parties or their representatives if such offices are available without cost to the other parties, or the property which is the subject of the claim.

15. EXCHANGE OF INFORMATION

In the event of an oral hearing, each party must provide to the AAA and any other parties a complete list of names and business affiliations of the witnesses the party will call at the hearing. This list is due from the party requesting an oral hearing at the time such request is due. All other parties must provide their witness lists no later than five (5) business days prior to the first scheduled hearing date.

Except for required filings under these rules, and as may be required by the Lien Law or determined by the arbitrator, there is no requirement that the parties exchange other information prior to the hearing.

16. ATTENDANCE AT HEARINGS

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend oral hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any person other than a party and its representative.

17. POSTPONEMENTS

Hearings may be postponed only if the arbitrator finds good cause and only if the postponement will not place the decision time outside of the one hundred twenty (120) calendar-day lien-filing period. All requests for postponements shall be communicated to the arbitrator through the AAA.

18. STENOGRAPHIC RECORD

There is no requirement that a stenographic record be made of the proceedings, but any party may make such arrangements at its own expense and shall notify the other parties of these arrangements in advance of the hearing.

19. PROCEEDINGS AND COMMUNICATION WITH ARBITRATOR

The arbitration shall be conducted by the arbitrator in any manner which will permit full and expeditious presentation of the case by all parties. Generally, the oral hearing shall be completed within one (1) day but the arbitrator may, for good cause, schedule additional hearings.

An arbitrator or attorney of record authorized by law may subpoena witnesses or documents. The arbitrator may require witnesses to testify under oath.

The arbitrator shall be the judge of the relevancy, materiality and admissibility of the evidence offered, and conformity to legal rules of evidence shall not be necessary.

Except when all parties otherwise agree in writing, there shall be no direct communications between a party and the arbitrator other than at the oral hearing, or during telephone conferences arranged by the AAA in which all parties are given the opportunity to participate.

20. ARBITRATION IN THE ABSENCE OF A PARTY

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to participate or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the participating party to submit such evidence as the arbitrator may require for the making of an award.

21. WAIVER OF RULES

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections thereto in writing shall be deemed to have waived the right to object.

22. NOTICES

(a) With the exception of the Demand for Arbitration, which shall be served as set forth above, any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these Rules; for any court action in connection therewith, or for the entry of judgment on any award made under these rules, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.

(b) The AAA, the arbitrator and the parties may also use overnight delivery, electronic fax transmission (fax) or electronic mail (email) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by other methods of communication.

(c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

(d) The parties shall also accept all notices from the AAA by telephone, including voicemail. In view of the time limitations established by the Lien Law for completing the arbitration, the parties are obligated, once having filed or having received notice of the Demand for Arbitration, to maintain contact with the AAA to stay apprised of the hearing or document submission schedule.

23. AWARD

The arbitrator shall render a decision in accordance with the provisions of the Lien Law.

When making determinations, the arbitrator shall also consider all determinations made by the arbitrator in any earlier proceedings pertaining to the same residential construction.

The award shall be in writing and shall be signed by the arbitrator. It shall be executed in the manner required by law.

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known address, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

24. APPLICATIONS TO COURT AND EXCLUSION OF LIABILITY

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these Rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these Rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages, injunctive or declaratory relief for any act or omission in connection with any arbitration under these Rules.

(d) Parties to an arbitration under these Rules may not call the arbitrator, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

25. INTERPRETATION AND APPLICATION OF RULES

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers

and duties. All other rules shall be interpreted and applied by the AAA, as administrator.

26. RELEASE OF DOCUMENTS

The AAA shall, upon the written request of a party to the arbitration, furnish to that party, at its expense, copies or certified copies of papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

27. FEES

All fees, including fees for oral hearings or additional parties, are due at the time of filing either the Demand or the Setoff or Counterclaim.

In the instance where a Claimant has not requested an oral hearing and a Respondent subsequently requests an oral hearing without the filing of a Setoff or Counterclaim, the Respondent must pay an Oral Hearing Fee at the time of making such request (see AAA Fee Schedule).

Filing Fees presume a case involving only one claimant and one respondent. An Additional Party Fee is payable by the party seeking to add a third or more parties (See AAA Fee Schedule).

AAA administrative fees and arbitrator compensation will be paid from the filing fees as shown in the Fee Schedule.

The parties will be charged an additional amount, payable in equal shares, for additional arbitrator compensation should the hearing be continued past the first day.

The parties will be charged, payable in equal shares, for the cost of any room rental or other ancillary charges for an oral hearing and required travel and other expenses of the arbitrator.

Fees are not refundable except that if the AAA is notified that a claim is settled or withdrawn before the AAA has received the notice of appointment from the arbitrator, the apportioned arbitrator compensation listed in the Fee Schedule will be refunded to the party from which it was received.

All fees are subject to allocation among the parties by the arbitrator in accordance with the Lien Law.