

New Jersey Residential Construction Lien Arbitration Rules

Effective April 1, 1997

Notice of Upcoming Rule Changes

The AAA is about to begin a review of its New Jersey Residential Construction Lien Arbitration Rules. At this time, we invite any and all comments, suggestions, concerns and ideas about how the New Jersey Residential Construction Lien Arbitration Rules may be improved.

Please email you comments, suggestions, concerns and ideas to Christopher Fracassa by no later than March 15, 2011, at fracassac@adr.org or mail them to the following address:

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1. NEW JERSEY RESIDENTIAL CONSTRUCTION LIEN ARBITRATION RULES

The New Jersey Construction Lien Law (P.L. 1993, Chapter 318) ("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/RFL").

Simultaneously with the service of the NUB/RFL, the lien claimant is also required to serve a demand for arbitration and fulfill all the requirements and procedures of the American Arbitration Association to institute an expedited proceeding before a single arbitrator designated by the 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 obtaining at the time a demand for arbitration under the Lien Law is 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, unless a party makes a timely request for an oral hearing before the arbitrator and has paid any oral hearing surcharges.

3. INITIATION OF EXPEDITED ARBITRATION PROCEEDING

Arbitration is initiated by the filing with the of two (2) copies of a Demand for Arbitration including two (2) copies of documentation in the form described below. 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 attachments, to the last known business address or place of residence of the 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 (\$175 for a document submission case; \$425 for an oral hearing case), to be paid to the AAA;
- (2) two (2) copies of the NUB/RFL (1 NUB/RFL per case) and proof of service;
- (3) 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 telephone numbers, if known;
- (4) the names, addresses and telephone numbers of representatives of the parties, if known;
- (5) a statement of whether the claimant requests an oral hearing with the arbitrator, and, also, a list of the

names and business affiliations of witnesses the claimant may call at the oral hearing;

(6) 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.

The AAA shall not be required to proceed with administration of the claim if the AAA determines that the demand does not fulfill the filing requirements which include, among others:

(a) providing the AAA with the exact number of required copies; and (b) the correct filing fee; as both outlined above and as referred to throughout these Rules.

4. ARBITRATOR APPOINTMENT AND VACANCIES

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

Any person appointed as arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, or any past or present relationship with the parties or their representatives. The AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

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

5. JOINDER

In accordance with the Lien Law, any contractor, subcontractor or supplier whose interests are affected by the filing of a NUB/RFL shall be permitted to join in the arbitration; but the arbitrator shall not determine the rights or obligations of any such parties except to the extent those rights or obligations are affected by the NUB/RFL.

6. 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.

7. SETOFF AND COUNTERCLAIM

The AAA will acknowledge to the parties receipt of the demand for arbitration. Within seven (7) calendar 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 a copy on each party;

(b) may file a setoff or counterclaim, by serving same on the AAA and on all other parties in writing, accompanied by a filing of \$175 to be paid to the AAA;

(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 surcharge of \$250, to be paid to the AAA;

(d) shall, if an oral hearing is not requested by any party, serve two copies on the AAA and one 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 seven (7) calendar days of the date of the AAA's written notice.

8. 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) calendar 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 an oral hearing surcharge of \$250, to be paid to the AAA.

9. EXTENSIONS OF TIME

The parties may modify any period of time under these rules by mutual agreement. The AAA or the arbitrator for good cause may extend any period of time established by these rules, subject to any time limitations set forth in the Lien Law.

10. 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 if such offices are available without cost to the other parties, or the property which is the subject of the claim.

11. EXCHANGE OF INFORMATION

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 information prior to the hearing.

12. ATTENDANCE AT HEARINGS

All persons who are parties to the arbitration, as well as representatives, are entitled to attend oral hearings. The arbitrator shall determine whether any other person may attend the hearing and shall have the power to require the exclusion of any witness, other than a parties during the testimony of any other witness.

13. POSTPONEMENTS

Hearings may be postponed only if the arbitrator finds good cause. All requests for postponements shall be communicated to the arbitrator through the AAA.

14. 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.

15. 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 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, and during telephone conferences arranged by the AAA in which all parties are given the opportunity to participate.

16. ARBITRATION IN THE ABSENCE OF A PARTY

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

17. 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.

18. NOTICES

With the exception of the demand, which shall be served as set forth above, each party shall be deemed to have consented that any papers, notices or process necessary or proper for the continuation of an

arbitration under these rules, and for any court action in connection therewith, may be served on such party by mail addressed to the party or its attorney 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.

The mailing requirement may be met by facsimile machine, telex, telegram, or other written forms of electronic communication.

The parties shall also accept all notices from the AAA by telephone, including answering machine or service. 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.

19. AWARD

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

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 legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that may be permitted by law.

20. APPLICATIONS TO COURT AND EXCLUSION OF LIABILITY

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.

Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration, and may not be named as a party thereto.

Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

21. 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.

22. FEES

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

The parties will be charged an additional \$250 per diem for arbitrator compensation, payable in equal shares, should the hearing be continued past the first day.

\$50 is payable by any party causing a postponement of a scheduled oral hearing.

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.

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

The AAA or the arbitrator is authorized to withhold release of the arbitrator's determination pending payment of all administrative fees and arbitrator compensation.

All fees are non-refundable, except as follows:

(a) if the is notified before the arbitrator commences review of any submissions of the parties in a document submission case that a claim has been settled or withdrawn, the apportioned arbitrator compensation listed in the Fee Schedule will be refunded;

(b) if the AAA is notified at least 48 hours before the scheduled time and date of an oral hearing that a claim has been settled or withdrawn, the apportioned arbitrator compensation listed in the Fee Schedule will be refunded.

FEE SCHEDULE

	Claimant			Respondent		
	Apportioned to:			Apportioned to:		
		AAA	Arbitrator		AAA	Arbitrator
Demand/Document Submission	\$175.00	\$100.00	\$75.00			
Demand/Oral Hearing	\$425.00	\$175.00	\$250.00			
Setoff or Counterclaim				\$175.00	\$100.00	\$75.00
Oral Hearing Surcharge				\$250.00	\$75.00	\$175.00

*This is payable by respondent if respondent requests an oral hearing after claimant filed the demand as a document submission case.

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