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Michigan Construction Lien Act Summary and Forms

MICHIGAN CONSTRUCTION LIEN ACT

The Michigan Construction Lien Act (Act), Act No. 497 of the Public Acts of 1980 as amended, being Sections 570.1101 through 570.1305 of the Michigan Compiled Laws, entitles any individual or firm that has provided an "improvement" to real estate to file a lien against that property. "Improvement" is defined as the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, or installing or affixing a fixture or material, pursuant to a contract. If you have made an improvement to real property pursuant to an oral or written contract, you must take the following steps to perfect your lien rights:

1. **NOTICE OF COMMENCEMENT**

The lien process begins with the contractor, subcontractor, supplier, or laborer obtaining a copy of the Notice of Commencement. The owner of the property on which an improvement is being started is required to record, in the office of the Register of Deeds, a Notice of Commencement. The Notice must contain:

- a. the legal description of the property;
- b. the name and address of the owner or lessee making the improvement to the property;
- c. the name and address of the title owner, if the owner making the

- improvement is only a land contract purchaser or a lessee;
- d. the name and address of the owner or lessee's designee (the person to receive all notices required to be furnished); and
 - e. the name and address of the general contractor, if any.

You should obtain a Notice of Commencement on every project. The Notice will provide you with all of the information necessary to prepare a Notice of Furnishing and a Claim of Lien. You will be required to furnish a Notice of Commencement to any of your subcontractors, suppliers, and laborers who request it.

You can always obtain the Notice of Commencement from the owner or lessee; the designee; the general contractor; or the person with whom you have contracted. If you are unable to obtain a Notice of Commencement by asking for it, you may obtain the Notice of Commencement with an attached Notice of Furnishing by making a formal written request by certified mail to the owner or lessee; the designee; the general contractor; or the person with whom you have contracted.

The Notice of Commencement, together with an attached Notice of Furnishing form, must be provided to the person making the request within 10 days after the date of mailing of a written request by certified mail.

2. **NOTICE OF FURNISHING**

Unless your contract is directly with the owner or lessee, you must file a Notice of Furnishing with the owner and general contractor. The Notice of Furnishing tells the owner that you are out there putting labor and/or material into his or her project and that you have the legal right to claim a lien on his or her property if you are not paid for your share of the improvement.

The information you need to complete the Notice of Furnishing is obtained from the Notice of Commencement. Fill in the name of the designee and send the Notice of Furnishing to the designee. If no designee is listed, send the Notice of Furnishing to the owner or lessee. List the party who you have a contract with and briefly describe the work in general terms (such as plumbing, heating, brick laying, etc.). Always attach a copy of the Notice of Commencement unless you have provided the liber and page number of the county records where the Notice of Commencement was recorded. Sign the Notice of Furnishing using your company name, your name, and your capacity with the company (President, Partner, Owner, etc.).

The Notice of Furnishing must be supplied to the designee (or owner or lessee if a designee does not exist) and general contractor within 20 days of your first delivery of labor or material on the project. The Notice of Furnishing should be sent by Certified Mail - Return Receipt Requested. You should also prepare and keep a Proof of Service of Notice of Furnishing.

It should be noted that failure to provide the Notice of Furnishing within the 20 day

period does not defeat your right to a lien for work done after the service of the Notice. Failure to provide the Notice of Furnishing within the 20 day period does not defeat your right to a lien for work done or services provided before the Notice unless payments were made by or on behalf of the owner to the contractor pursuant to either a sworn statement or waiver of lien for the work performed by you. Also, the owner's failure to provide the Notice of Commencement extends your time to file the Notice of Furnishing.

3. **SWORN STATEMENT**

A Contractor lien claimant must provide a sworn statement to the owner or lessee when:

- a. payment is due to the contractor from the owner or lessee;
- b. the contractor requests payment from the owner or lessee; or
- c. a demand for the sworn statement has been made by the owner or lessee.

A Subcontractor lien claimant must provide a sworn statement to the owner or lessee when:

- a. payment is due to the subcontractor from the contractor;
- b. the subcontractor requests payment from the contractor; or
- c. a demand for the sworn statement has been made by the owner or lessee.

You must file the Sworn Statement, under oath, listing each subcontractor, laborer, and supplier who has sold you material or furnished labor on a project, including wages and fringe benefits.

When completing a Sworn Statement you should:

- a. list the total contract price unless that figure is unknown (such as a time and material contract), and
- b. complete all essential information on the form.

4. **WAIVER OF LIEN**

Several "Waivers of Lien" forms are provided for in the statute. These Waiver forms include:

- a. Full Unconditional Waiver,
- b. Partial Unconditional Waiver,
- c. Full Conditional Waiver, and
- d. Partial Conditional Waiver.

Conditional Waivers mean that you agree to waive your lien rights for a portion of the job when you receive your payment. This specifically addresses the problems of a general contractor who wants a waiver from you prior to issuing the check.

5. **CLAIM OF LIEN**

If you have filed your Notice of Furnishing (unless your dealing directly with the owner) and have provided the required Sworn Statements and partial waivers, and you have not been paid in full, the last step is to file your Claim of Lien.

The Claim of Lien must be filed within 90 days after the furnishing of the last labor or material to the project.¹ It must be filed at the county Register of Deeds where the property is located. You must list the first and last day of providing the labor or material; your name and address as a lien claimant; the legal description of the property; the name of the owner; the amount of the total contract; and the amount which remains unpaid. Sign the form in front of a Notary Public and show your capacity with the company. Complete a Proof of Service of a Claim of Lien and file everything with the Register of Deeds after serving the owner in person or by Certified Mail. The law gives you fifteen days to serve the Claim of Lien on the owner or his designee after filing with the Register of Deeds.

Legal proceedings to enforce the lien must be commenced within one year of the date the lien is filed with the Register of Deeds.

SPECIAL RULES FOR RESIDENTIAL STRUCTURES

The Act defines a “residential structure” as an individual residential condominium unit or a residential building containing not more than two residential units, the land on which it is or will be located, and all appurtenances thereto, in which the owner or lessee contracting for the improvement is residing or will reside upon completion of the improvement.

On residential work (as defined above) the law requires a written contract between the owner (or lessee) and the contractor. All changes, amendments, or additions must also be in writing. In addition, the law also requires the written contract to contain the following statement:

“A residential builder or a residential maintenance and alteration contractor is required to be licensed under Article 24 of Public Act 299 of 1980 (the Michigan Occupational Code) as amended, being sections 339.2401 to 339.2412 of the Michigan Compiled Laws. An electrician is required to be licensed under Act No. 217 of the Public Acts of 1956, as amended, being sections 338.881 to 338.892 of the Michigan Compiled Laws. A plumber is required to be licensed under Act No. 266 of 1929, as amended, being

¹ A common mistake is to file the lien 3 months to the date of the last labor or materials (i.e. file a lien on the 18th of a month when the last labor or materials were provided on the 18th 3 months earlier). This often leads to liens being filed on the 91st or 92nd day since most months after more than 30 days.

sections 338.901 to 338.917 of the Michigan Compiled Laws.”

If the law requires the contractor to be licensed to provide the contracted work, the written contract must state that the contractor is licensed and the contractor’s license number.

Disclaimer

This is intended as a simple “how to” book; it is not a technical manual, and certainly does not contain everything you may need to know about the lien act. It is an attempt to simplify the statutory language and condense, into a step-by-step procedure, most of the requirements necessary to protect lien rights. If you have any questions about the lien act, please consult the actual text of the act or contact an attorney.

NOTICE OF COMMENCEMENT

WARNING TO THE HOMEOWNER

Michigan law requires that you do the following:

- 1. Complete and return this form to the person who asked for it within 10 days after the date of the postmark on the request.**
- 2. If you do not complete and return this form within the 10 days, you may have to pay the expenses incurred in getting the information.**
- 3. If you do not live at the site of the improvement, you *must* post a copy of this form in a conspicuous place at that site.**

You are not required to but *should* do the following:

- 1. Complete and post a copy of this form at the place where the improvement is being made even if you live there.**
- 2. Make and keep a copy of this form for your own records.**

_____, being sworn, states:

To lien claimants and subsequent purchasers:

Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the below named designee and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person having a construction lien arising by virtue of work performed on this improvement should refer to the name of the owner or lessee and the legal description appearing in this notice. A person subsequently acquiring an interest in the land described is not required to be named in a claim of lien.

A copy of this notice with an attached form for notice of furnishing may be obtained upon making a written request by certified mail to the named owner or lessee; the designee; or the person with whom you have contracted.

The legal description of the real property on which the improvement is to be made is:
[legal description].

The name, address, and capacity of the owner or lessee of the real property contracting for the improvement is

Name: _____
Address: _____
Capacity: _____

The name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee, is

Name: _____
Address: _____

The name and address of the owner's or lessee's designee is

Name: _____
Address: _____

The name and address of the general contractor, if any, is

Name: _____
Address: _____

/s/ _____
By: _____
Its: _____

State of Michigan, County of _____
Subscribed and sworn to before me on
this ____ day of _____, 20__

, Notary Public
Wayne County, MI
My commission expires:

**Prepared by and when recorded return
to: Michael P. Bartnicki
134 N. Main Street
Plymouth, MI 48170**

NOTICE OF FURNISHING

To:

Please take notice that the undersigned is furnishing to (other contracting party)
_____, certain labor and/or materials for _____ (type of work performed) _____ and in
connection with the improvement to the real property described in the notice of
commencement recorded in liber ____ on page _____, _____ County, State of
Michigan, to wit:

[legal description]

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE MICHIGAN
CONSTRUCTION LIEN ACT. IF YOU HAVE QUESTIONS ABOUT YOUR RIGHTS AND
DUTIES UNDER THIS ACT, YOU SHOULD CONTACT AN ATTORNEY TO PROTECT
YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO
YOUR PROPERTY.

(company)

Date: _____

By: _____

Its: _____

_____ (address) _____

PROOF OF SERVICE OF NOTICE OF FURNISHING

_____, being duly sworn, states that on _____,
200___, he caused to be served by certified mail, return receipt requested, with sufficient
postage thereon, the above Notice of Furnishing upon
_____ at the above-address.

(name)

State of Michigan, County of _____
Subscribed and sworn to before me on
this ____ day of _____, 20___

, Notary Public
Wayne County, MI
My commission expires:

**Prepared by and when recorded return
to: Michael P. Bartnicki
134 N. Main Street
Plymouth, MI 48170**

WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE PROPERTY MAY NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT , 1980 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED. _____ (Deponent)

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1110.

Subscribed and sworn to before me
this _____ day of _____, 200__.

Notary Public
_____ County, Michigan
My commission expires: _____

CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that on _____,
200____, Lien
Claimant, _____,
at _____,
Michigan, first provided labor or
material _____ to
_____, for improvements to property
situated in the City of
_____,
_____ County, Michigan
described as follows:

[legal description]

the owner [or owners designee] of the described property is
_____. The last day of providing labor or material was
_____.

The lien claimant's contract amount, including extras, is \$_____. The lien claimant has received (no payment /payment in the amount of \$_____) thereon and, therefore, claims a construction lien upon the above-described real property in the amount of \$_____

_____, Lien Claimant

Date

By: _____
Its: _____

State of Michigan, County of _____
Subscribed and sworn to before me, on
this _____ day of _____, _____

_____, Notary Public
_____ County, MI

My commission expires: _____

Prepared by and when recorded return to: Michael P. Bartnicki, 134 N. Main Street, Plymouth, MI 48170

DISCHARGE OF LIEN

_____, Lien Claimant, having filed a lien in the amount of
\$_____, being recorded in Liber _____ Page _____ against
_____, for the improvement to the property described as:

[legal description]

Commonly known as:

and such lien having been fully paid and satisfied, all of such construction lien rights against
subject property are hereby waived and released.

Dated

_____, Lien Claimant

By:
Its:

State of Michigan, County of _____
Acknowledged before me,
on this _____ day of _____, 200__

_____, Notary Public, County of
Wayne, State of Michigan
My Commission expires:

Prepared by and when recorded return to: Michael P. Bartnicki, 134 N. Main Street, Plymouth, MI
48170

PARTIAL UNCONDITIONAL WAIVER

I/we have a contract with _____ to provide _____
for the improvement to the property described as:

and hereby waive my/our construction lien to the amount of \$_____, for
labor/materials provided through _____, 200__.

This waiver, together with all previous waivers, if any, (circle one) does/does not
cover all amounts due to me/us for contract improvement provided through the date shown
above.

Date

By:
Its:
Address: _____
Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

PARTIAL CONDITIONAL WAIVER

I/we have a contract with _____ to provide _____
for the improvement to the property described as:

and hereby waive my/our construction lien to the amount of \$_____, for
labor/materials provided through_____.

This waiver, together with all previous waivers, if any, (circle one) does/does not
cover all amounts due to me/us for contract improvement provided through the date shown
above.

This waiver is conditioned on actual payment of the amount shown above.

Date

By:
Its:
Address: _____
Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

FULL UNCONDITIONAL WAIVER

My/our contract with _____ to provide _____

for the improvement to the property described as:

having been fully paid and satisfied, all my/our construction lien rights against such property are hereby waived and released.

Date

By:
Its:
Address: _____
Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

FULL CONDITIONAL WAIVER

My/our contract with _____ to provide _____
for the improvement to the property described as:

having been fully paid and satisfied, all my/our construction lien rights against such property
are hereby waived and released.

This waiver is conditioned on actual payment of \$_____.

Date

By:
Its:
Address: _____
Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

LIEN INFORMATION

Client/Claimant: _____
(Name & Address)

Contractor/Debtor: _____
(Name & Address)

Property Owner: _____

Project Name: _____
(Address)

Copy of Legal Description? Yes / No

Copy of Notice of Commencement? Yes / No

First date labor/material provided: _____

Last date labor/material provided: _____

* * * The Claim of Lien must be filed within 90 days after the furnishing of the labor or material to the project.

b

Total contract amount (including extras): \$ _____

Total amount paid to date: \$ _____

Total amount due: \$ _____
(lien amount)