

# HOUSE BILL No. 5051

July 24, 2007, Introduced by Reps. Stakoe, Meekhof, Ball, Hammon, Caul, Robertson, Hansen, Nofs and Caswell and referred to the Committee on Oversight and Investigations.

A bill to amend 1980 PA 497, entitled  
"Construction lien act,"  
by amending sections 107, 108a, 109, 110, 115, 119, and 203 (MCL 570.1107, 570.1108a, 570.1109, 570.1110, 570.1115, 570.1119, and 570.1203), section 107 as amended by 2006 PA 497, section 108a as added and sections 109 and 119 as amended by 1982 PA 17, and sections 110, 115, and 203 as amended by 2006 PA 572.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 107. (1) ~~Each~~**SUBJECT TO SUBSECTION (7), EACH**  
2 contractor, subcontractor, supplier, or laborer who provides an  
3 improvement to real property has a construction lien upon the  
4 interest of the owner or lessee who contracted for the  
5 improvement to the real property, as described in the notice of

1 commencement given under section 108 or 108a, the interest of an  
2 owner who has subordinated his or her interest to the mortgage  
3 for the improvement of the real property, and the interest of an  
4 owner who has required the improvement. A construction lien  
5 acquired pursuant to this act shall not exceed the amount of the  
6 lien claimant's contract less payments made on the contract.

7 (2) A construction lien under this act attaches to the  
8 entire interest of the owner or lessee who contracted for the  
9 improvement, including any subsequently acquired legal or  
10 equitable interest.

11 (3) ~~Each~~ **SUBJECT TO SUBSECTION (7), EACH** contractor,  
12 subcontractor, supplier, or laborer who provides an improvement  
13 to real property to which the person contracting for the  
14 improvement had no legal title has a construction lien upon the  
15 improvement for which the contractor, subcontractor, supplier, or  
16 laborer provided labor, material, or equipment. The forfeiture,  
17 surrender, or termination of any title or interest held by an  
18 owner or lessee who contracted for an improvement to the  
19 property, an owner who subordinated his or her interest to the  
20 mortgage for the improvement, or an owner who has required the  
21 improvement does not defeat the lien of the contractor,  
22 subcontractor, supplier, or laborer upon the improvement.

23 (4) If the rights of a person contracting for an improvement  
24 as a land contract vendee or a lessee are forfeited, surrendered,  
25 or otherwise terminated, any lien claimant who has provided a  
26 notice of furnishing or is excused from providing a notice of  
27 furnishing under section 108 ~~, 108a,~~ or 109 and who performs the

1 covenants contained in the land contract or lease within 30 days  
2 after receiving actual notice of the forfeiture, surrender, or  
3 termination is subrogated to the rights of the contracting vendee  
4 or lessee as those rights existed immediately before the  
5 forfeiture, surrender, or termination.

6 (5) For purposes of this act, if the real property is owned  
7 or leased by more than 1 person, there is a rebuttable  
8 presumption that an improvement to real property under a contract  
9 with an owner or lessee was consented to by any other co-owner or  
10 co-lessee. If enforcement of a construction lien through  
11 foreclosure is sought and the court finds that the improvement  
12 was consented to by a co-owner or co-lessee who did not contract  
13 for the improvement, the court shall order the entire interest of  
14 that co-owner or co-lessee, including any subsequently acquired  
15 legal or equitable interest, to be subject to the construction  
16 lien. A deficiency judgment shall not be entered against a  
17 noncontracting owner, co-owner, lessee, or co-lessee.

18 (6) If the real property of an owner or lessee is subject to  
19 multiple construction liens, the sum of the construction liens  
20 shall not exceed the amount the owner or lessee agreed to pay the  
21 person with whom he or she contracted for the improvement as  
22 modified by all additions, deletions, and other amendments, less  
23 payments made by or on behalf of the owner or lessee, pursuant to  
24 either a contractor's sworn statement or a waiver of lien, in  
25 accordance with this act.

26 ~~———— (7) After the effective date of the amendatory act that~~  
27 ~~added this subsection, a construction lien of a subcontractor or~~

~~supplier for an improvement to a residential structure shall only include an amount for interest, including, but not limited to, a time price differential or a finance charge, if the amount is in accordance with the terms of the contract between the subcontractor or supplier and the contractor or subcontractor and does not include any interest that accrues after 90 days after the claim of lien is recorded.~~

**(7) A SUBCONTRACTOR, SUPPLIER, OR LABORER IS NOT ENTITLED TO A CONSTRUCTION LIEN ON A RESIDENTIAL STRUCTURE.**

Sec. 108a. (1) An owner or lessee contracting for an improvement to a residential structure shall prepare and provide a notice of commencement to a contractor ~~, subcontractor, supplier, or laborer~~ who has made a written request for the notice pursuant to this section.

(2) The notice of commencement shall contain the following information:

(a) The legal description of the real property on which the improvement is to be made. A description conforming to section 212 or 255 of ~~Act No. 288 of the Public Acts of 1967, being sections 560.212 and 560.255 of the Michigan Compiled Laws, shall be~~ **THE LAND DIVISION ACT, 1967 PA 288, MCL 560.212 AND 560.255,** **IS** a sufficient legal description.

(b) The name, address, and capacity of the owner or lessee of the real property contracting for the improvement.

(c) 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.

(d) The name and address of the owner's or lessee's designee.

~~\_\_\_\_\_ (e) The name and address of the general contractor, if any. The notice of commencement form shall contain the following caption below the line for the general contractor's name and address: (the name of the person with whom you have contracted to provide substantially all the improvements to the property.)~~

(E) ~~(f)~~ The following statement in boldface type on the front of the form:

WARNING TO HOMEOWNER

Michigan law requires that you do the following:

1. Complete and return this form to ~~the person~~ **A CONTRACTOR** who ~~asked for~~ **REQUESTS** 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.

(F) ~~(g)~~ The following statement:

"To lien claimants and subsequent purchasers:

Take notice that work is about to commence on an improvement

1 to the real property described in this instrument. A ~~person~~  
 2 **CONTRACTOR** having a construction lien may preserve the lien by  
 3 providing a notice of furnishing to the above named designee ~~and~~  
 4 ~~the general contractor, if any,~~ and by timely recording a claim  
 5 of lien, in accordance with law.

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

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

16 (G) ~~(h)~~ The name and address of the person preparing the  
 17 notice.

18 (H) ~~(i)~~ An affidavit of the owner or lessee or the agent of  
 19 the owner or lessee ~~which~~ **THAT** verifies the notice.

20 ~~—— (3) Each copy of the notice of commencement shall have a~~  
 21 ~~blank notice of furnishing as described in section 109 attached~~  
 22 ~~to it. The blank notice of furnishing shall be easily detachable~~  
 23 ~~from the copy of the notice and need not be recorded.~~

24 (3) ~~(4)~~ Incorrect information contained in the notice of  
 25 commencement furnished by or for an owner or lessee ~~shall~~ **DOES**  
 26 not affect adversely the rights of a lien claimant as against the  
 27 property of that owner or lessee.

1       (4) ~~(5)~~ The owner, lessee, or designee, within 10 days after  
2 the date of mailing of a written request by certified mail from a  
3 contractor, ~~subcontractor, supplier, or laborer,~~ shall prepare  
4 and provide a copy of the notice of commencement ~~, together with~~  
5 ~~an attached blank notice of furnishing form,~~ to the contractor. ~~,~~  
6 ~~subcontractor, supplier, or laborer requesting a copy of the~~  
7 ~~notice of commencement.~~ A contractor ~~, subcontractor, supplier,~~  
8 ~~or laborer~~ who requests a notice of commencement from an owner or  
9 lessee of a residential structure shall supply a blank notice of  
10 commencement form ~~together with the attached blank notice of~~  
11 ~~furnishing~~ to the owner or lessee at the time the request is  
12 made.

13       ~~—— (6) A contractor who has been provided with a notice of~~  
14 ~~commencement from the owner, lessee, or designee, within 10 days~~  
15 ~~after the date of mailing of a written request by certified mail~~  
16 ~~from a subcontractor, supplier, or laborer who has a direct~~  
17 ~~contract with the contractor, shall provide a copy of the notice~~  
18 ~~of commencement, together with an attached blank notice of~~  
19 ~~furnishing form, to the subcontractor, supplier, or laborer~~  
20 ~~requesting a copy of the notice of commencement. If the~~  
21 ~~contractor has not been provided a notice of commencement, the~~  
22 ~~contractor shall provide such subcontractor, supplier, or laborer~~  
23 ~~the name and address of the owner or lessee.~~

24       ~~—— (7) A subcontractor who has been provided with a notice of~~  
25 ~~commencement from the owner, lessee, designee, contractor, or~~  
26 ~~subcontractor, within 10 days after the date of mailing of a~~  
27 ~~written request by certified mail from a subcontractor, supplier,~~

~~1 or laborer who has a direct contract with the subcontractor,  
2 shall provide a copy of the notice of commencement, together with  
3 an attached blank notice of furnishing form, to the  
4 subcontractor, supplier, or laborer requesting a copy of the  
5 notice of commencement. If the subcontractor has not been  
6 provided a notice of commencement, the subcontractor shall  
7 provide to such subcontractor, supplier, or laborer, the name and  
8 address of the owner or lessee.~~

9       (5) ~~(8)~~—If the owner, lessee, or designee has received a  
10 blank notice of commencement form pursuant to subsection ~~(5)~~—(4)  
11 and if the owner or lessee does not currently reside at the real  
12 property described in the notice of commencement, the owner,  
13 lessee, or designee shall post a copy of the notice of  
14 commencement in a conspicuous place on the real property during  
15 the course of the actual physical improvement to the real  
16 property.

17 ~~—— (9) Failure of the owner, lessee, or designee to provide,  
18 upon written request, the notice of commencement, in accordance  
19 with this section, shall operate to extend the time within which  
20 a subcontractor or supplier may provide a notice of furnishing,  
21 as described in section 109, until 20 days after the notice of  
22 commencement actually has been furnished to the subcontractor or  
23 laborer.~~

24 ~~—— (10) Failure of the owner, lessee, or designee to provide  
25 the notice of commencement, in accordance with this section,  
26 shall operate to extend the time within which a laborer may  
27 provide a notice of furnishing, as described in section 109,~~



~~until 30 days after the notice of commencement actually has been furnished to the laborer, or until the time in which to provide the notice of furnishing in accordance with section 109 expires, whichever is later.~~

~~—— (11) Failure of the owner, lessee, or designee to post or keep posted a copy of the notice of commencement as provided in subsection (8) shall render the owner or lessee liable to a subcontractor, supplier, or laborer who becomes a lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the posting.~~

~~—— (12) Failure of a contractor, who has been provided with a notice of commencement from the owner, lessee, or designee, to provide the notice of commencement upon the request of a lien claimant who has a contract with the contractor for an improvement to the property shall render the contractor liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the notice of commencement. Failure of a contractor to provide the name and address of the owner or lessee in accordance with subsection (6) shall render the contractor liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the name and address of the owner or lessee.~~

~~—— (13) Failure of a subcontractor, who has been provided with a notice of commencement from the owner, lessee, designee, contractor, or subcontractor, to provide the notice of commencement upon the request of a subcontractor, supplier, or laborer who has a direct contract with the subcontractor shall~~

~~render the subcontractor liable to such subcontractor, supplier, or laborer for all actual expenses sustained by the subcontractor, supplier, or laborer in obtaining the information otherwise provided by the notice of commencement. Failure of a subcontractor to provide the name and address of the owner or lessee in accordance with subsection (6) shall render the subcontractor liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the name and address of the owner or lessee.~~

(6) ~~(14)~~ This section shall only apply **APPLIES** to an improvement to a residential structure.

Sec. 109. (1) Except as otherwise provided in sections 108 ~~7~~ ~~108a~~, and 301, a subcontractor or supplier who contracts to provide an improvement to real property **OTHER THAN A RESIDENTIAL STRUCTURE** shall provide a notice of furnishing to the designee and the general contractor, if any, as named in the notice of commencement at the address shown in the notice of commencement, either personally or by certified mail, within 20 days after furnishing the first labor or material. If a designee has not been named in the notice of commencement, or if the designee has died, service shall be made upon the owner or lessee named in the notice of commencement. If service of the notice of furnishing is made by certified mail, service is complete upon mailing. A contractor is not required to provide a notice of furnishing to preserve lien rights arising from his or her contract directly with an owner or lessee.

(2) Except as otherwise provided in ~~sections~~ **SECTION** 108,

1 ~~and 108a,~~ a laborer who contracts to provide an improvement to  
2 real property **OTHER THAN A RESIDENTIAL STRUCTURE** shall provide a  
3 notice of furnishing to the designee and the general contractor,  
4 if any, as named in the notice of commencement at the address  
5 shown in the notice of commencement, either personally or by  
6 mail, within 30 days after wages were contractually due but were  
7 not paid. If a designee has not been named in the notice of  
8 commencement, or if the designee has died, service shall be made  
9 upon the owner or lessee named in the notice of commencement. If  
10 service of the notice of furnishing is made by mail, service is  
11 complete upon mailing by first class mail with postage prepaid.

12 (3) Except as otherwise provided in ~~sections~~ **SECTION 108,**  
13 ~~and 108a,~~ a laborer who provides an improvement to real property  
14 **OTHER THAN A RESIDENTIAL STRUCTURE** shall provide a notice of  
15 furnishing to the designee and the general contractor, if any,  
16 named in the notice of commencement at the address shown in the  
17 notice of commencement, either personally or by certified mail,  
18 by the fifth day of the second month following the month in which  
19 fringe benefits or withholdings from wages were contractually due  
20 but were not paid. If a designee has not been named in the notice  
21 of commencement, or if the designee has died, service shall be  
22 made upon the owner or lessee named in the notice of  
23 commencement. If service of the notice of furnishing is made by  
24 certified mail, service is complete upon mailing.

25 (4) The notice of furnishing, if not given on the form  
26 attached to the notice of commencement, shall be in substantially  
27 the following form:

NOTICE OF FURNISHING

To: .....  
 (name of designee (or owner or lessee) from notice of commencement)

.....  
 (address from notice of commencement)

Please take notice that the undersigned is furnishing to .....  
 .....  
 (name and address of other contracting party)

certain labor or material for ..... ,  
 (describe type of work)

in connection with the improvements to the real property described  
 in the notice of commencement recorded in liber ..... , on  
 page ..... , .....records,  
 (name of county)

.....  
 or (a copy of which is attached hereto)

**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.**

.....  
 (name and address of lien claimant)

by .....  
 (name and capacity of party  
 signing for lien claimant)

.....  
 (address of party signing)

Date: ..... .

(5) The failure of a lien claimant to provide a notice of  
 furnishing within the time specified in this section ~~shall~~ **DOES**  
 not defeat the lien claimant's right to a construction lien for  
 work performed or materials furnished by the lien claimant after

1 the service of the notice of furnishing.

2 (6) The failure of a lien claimant ~~to~~ provide a notice of  
3 furnishing within the time specified in this section ~~shall~~ **DOES**  
4 not defeat the lien claimant's right to a construction lien for  
5 work performed or materials furnished by the lien claimant before  
6 the service of the notice of furnishing except to the extent that  
7 payments were made by or on behalf of the owner or lessee to the  
8 contractor pursuant to either a contractor's sworn statement or a  
9 waiver of lien in accordance with this act for work performed or  
10 material delivered by the lien claimant. This subsection does not  
11 apply to a laborer.

12 (7) The failure of a laborer to provide a notice of  
13 furnishing to the designee as required by subsection (2) ~~shall~~  
14 ~~defeat~~ **DEFEATS** the laborer's lien for those wages for which the  
15 notice of furnishing is required.

16 (8) The failure of a laborer to provide a notice of  
17 furnishing to the designee as required by subsection (3) ~~shall~~  
18 ~~defeat~~ **DEFEATS** the laborer's lien for those fringe benefits and  
19 withholdings for which the notice of furnishing is required.

20 (9) The failure of a laborer to provide a notice of  
21 furnishing to the general contractor within the time specified in  
22 subsection (2) or (3) ~~shall~~ **DOES** not defeat the laborer's right  
23 to a construction lien, but the laborer ~~shall be~~ **IS** liable for  
24 any actual damages sustained by the general contractor as a  
25 result of the failure.

26 (10) One or more laborers may authorize an agent to prepare  
27 and serve a notice of furnishing in the manner provided in this

1 section. ~~Notice~~ **A NOTICE** of furnishing under this section may  
2 contain the notice of furnishing of more than 1 laborer, ~~and IN~~  
3 **WHICH CASE IT** shall contain the information required in  
4 ~~subsection~~ **SUBSECTION** (4) as to each laborer for whom it is  
5 prepared. The **COURT SHALL CONSIDER THE** notice of furnishing of  
6 each lien claimant under this subsection ~~shall be considered by~~  
7 ~~the court~~ on its own merits.

8 (11) **THIS SECTION DOES NOT APPLY IF THE REAL ESTATE INVOLVED**  
9 **IS A RESIDENTIAL STRUCTURE. A SUBCONTRACTOR, LABORER, OR SUPPLIER**  
10 **SHALL NOT PROVIDE A NOTICE OF FURNISHING TO AN OWNER, LESSEE,**  
11 **DESIGNEE, OR GENERAL CONTRACTOR FOR IMPROVEMENTS PROVIDED TO A**  
12 **RESIDENTIAL STRUCTURE.**

13 Sec. 110. (1) A contractor **WHO CONTRACTS TO PROVIDE AN**  
14 **IMPROVEMENT TO REAL PROPERTY OTHER THAN A RESIDENTIAL STRUCTURE**  
15 shall provide a sworn statement to the owner or lessee in each of  
16 the following circumstances:

17 (a) When payment is due to the contractor from the owner or  
18 lessee or when the contractor requests payment from the owner or  
19 lessee.

20 (b) When a demand for the sworn statement has been made by  
21 or on behalf of the owner or lessee.

22 (2) A subcontractor shall provide a sworn statement to the  
23 owner or lessee when a demand for the sworn statement has been  
24 made by or on behalf of the owner or lessee and the owner or  
25 lessee has complied with the requirements of subsection (6).

26 (3) A subcontractor **WHO HAS PROVIDED AN IMPROVEMENT TO REAL**  
27 **PROPERTY OTHER THAN A RESIDENTIAL STRUCTURE** shall provide a sworn

statement to the contractor when payment is due to the subcontractor from the contractor or when the subcontractor requests payment from the contractor.

(4) A sworn statement shall list each subcontractor and supplier with whom the person issuing the sworn statement has contracted relative to the improvement to the real property. The sworn statement shall contain a list of laborers with whom the person issuing the sworn statement has contracted relative to the improvement to the real property and for whom payment for wages or fringe benefits and withholdings are due but unpaid and the itemized amount of such wages or fringe benefits and withholdings. The sworn statement shall be in substantially the following form:

#### **SWORN STATEMENT**

State of Michigan)

) ss.

County of .....)

.....(deponent), being sworn, states the following:

..... is the (contractor) (subcontractor)

for an improvement to the following real property in

..... County, Michigan, described as follows:

.....  
(insert legal description of property)

The following is a statement of each subcontractor and supplier, and laborer for whom payment of wages or fringe benefits and withholdings is due but unpaid, with whom the (contractor) (subcontractor) has (contracted) (subcontracted) for

1 performance under the contract with the owner or lessee of the  
 2 property, and the amounts due to the persons as of the date of  
 3 this statement are correctly and fully set forth opposite their  
 4 names:

5	Name,							
6	address,							
7	and							
8	tele-							
9	phone							
10	number							Amount
11	of							of
12	subcon-							laborer
13	trac-						Amount	fringe
14	tor,	Type of					of	benefits
15	sup-	improve-	Total		Amount	Balance	laborer	and
16	plier,	ment	con-	Amount	cur-	to com-	wages	with-
17	or	fur-	tract	already	rently	plete	due	holdings
18	laborer	nished	price	paid	owing	(op-	but	due but
19	.....					tional)	unpaid	unpaid

20 Totals  
 21 (Some columns are not applicable to all persons listed)

22 The contractor has not procured material from, or  
 23 subcontracted with, any person other than those set forth and  
 24 owes no money for the improvement other than the sums set forth.

25 I make this statement as the (contractor) (subcontractor) or  
 26 as ..... of the (contractor) (subcontractor) to represent to  
 27 the owner or lessee of the property and his or her agents that  
 28 the property is free from claims of construction liens, or the  
 29 possibility of construction liens, except as specifically set  
 30 forth in this statement and except for claims of construction  
 31 liens by laborers that may be provided under section 109 of the  
 32 construction lien act, 1980 PA 497, MCL 570.1109.

33 WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE



1 PROPERTY MAY NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM  
 2 OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A  
 3 NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF  
 4 FURNISHING UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 1980  
 5 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE  
 6 IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

7 ON RECEIPT OF THIS SWORN STATEMENT, THE OWNER OR LESSEE, OR  
 8 THE OWNER'S OR LESSEE'S DESIGNEE, MUST GIVE NOTICE OF ITS  
 9 RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH  
 10 SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF  
 11 FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS  
 12 EXCUSED UNDER SECTION 108, ~~OR 108A,~~ TO EACH SUBCONTRACTOR,  
 13 SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A  
 14 SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF  
 15 FURNISHING OR WHO IS NAMED IN THE SWORN STATEMENT MAKES A  
 16 REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE  
 17 REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS  
 18 AFTER RECEIVING THE REQUEST.

19 .....  
 20 Deponent

21 WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN  
 22 STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES  
 23 AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA  
 24 497, MCL 570.1110.

25 Subscribed and sworn to before me on .....(DATE)

1 .....  
 2 Notary Public, ..... County, Michigan.  
 3 My commission expires: ..... .

4 (5) The contractor or subcontractor is not required to list  
 5 in the sworn statement material furnished by the contractor or  
 6 subcontractor out of his or her own inventory that was not  
 7 purchased specifically for performing the contract.

8 (6) On receipt of a sworn statement, the owner, lessee, or  
 9 designee shall give notice of its receipt, either in writing, by  
 10 telephone, or personally, to each subcontractor, supplier, and  
 11 laborer who has provided a notice of furnishing under section 109  
 12 or, if a notice of furnishing is excused under section 108, ~~or~~  
 13 ~~108a,~~ to each subcontractor, supplier, and laborer named in the  
 14 sworn statement. If a subcontractor, supplier, or laborer who has  
 15 provided a notice of furnishing or who is named in the sworn  
 16 statement makes a request, the owner, lessee, or designee shall  
 17 provide the requester a copy of the sworn statement within 10  
 18 business days after receiving the request.

19 (7) After the contractor or subcontractor provides the sworn  
 20 statement, the owner or lessee may withhold or, upon written  
 21 demand from the contractor, shall withhold from the amount due or  
 22 to become due to the contractor or to the subcontractor for work  
 23 already performed an amount sufficient to pay all sums due to  
 24 subcontractors, suppliers, or laborers, as shown by the sworn  
 25 statement, or due to lien claimants who have provided a notice of  
 26 furnishing under section 109. From the amount withheld, the owner  
 27 or lessee may directly pay subcontractors, suppliers, or laborers

1 the amount they are due as shown by the sworn statement. If the  
2 contract provides for payments by the owner to the general  
3 contractor in the normal course of construction, but the owner  
4 elects to pay lien claimants directly under this section, the  
5 first time the owner elects to make payment directly to a lien  
6 claimant, he or she shall provide at least 5 business days'  
7 notice to the general contractor of the intention to make direct  
8 payment. Subsequent direct disbursements to lien claimants need  
9 not be preceded by the 5-day notice provided in this section  
10 unless the owner first returns to the practice of paying all sums  
11 to the general contractor. As between the owner or lessee and the  
12 contractor or subcontractor, all payments made under this  
13 subsection are considered the same as if paid directly to the  
14 contractor or subcontractor. If an amount is withheld under this  
15 subsection from the contractor or subcontractor, the owner or  
16 lessee, upon request, shall prepare and provide to the contractor  
17 or subcontractor an itemized statement of the sums withheld. If  
18 an amount is paid directly to a lien claimant under this section,  
19 the owner or lessee shall, if requested by the contractor or  
20 subcontractor, provide to the contractor or subcontractor an  
21 itemized statement of the sums paid.

22 (8) An owner, lessee, designee, mortgagee, or contractor may  
23 rely on a sworn statement prepared by a party other than himself  
24 or herself to avoid the claim of a subcontractor, supplier, or  
25 laborer unless the subcontractor, supplier, or laborer has  
26 provided a notice of furnishing as required under section 109 or  
27 unless the notice of furnishing is excused under section 108. ~~or~~

1 ~~108a.~~

2 (9) If a contractor fails to provide a sworn statement to  
3 the owner or lessee before recording the contractor's claim of  
4 lien, the contractor's construction lien is not invalid. However,  
5 the contractor is not entitled to any payment, and a complaint,  
6 cross-claim, or counterclaim may not be filed to enforce the  
7 construction lien, until the sworn statement has been provided.

8 (10) If a subcontractor fails to provide a sworn statement  
9 under subsection (2) to the owner or lessee before recording the  
10 subcontractor's claim of lien, the subcontractor's construction  
11 lien is valid. However, a complaint, cross-claim, or counterclaim  
12 may not be filed to enforce the construction lien until the sworn  
13 statement has been provided.

14 (11) A contractor or subcontractor who desires to draw money  
15 and gives or causes to be given to any owner or lessee a sworn  
16 statement required by this section that is false, with intent to  
17 defraud, is guilty of a crime as follows:

18 (a) If the statement involved is for less than \$200.00, the  
19 contractor or subcontractor is guilty of a misdemeanor punishable  
20 by imprisonment for not more than 93 days or a fine of not more  
21 than \$500.00 or 3 times the statement amount, whichever is  
22 greater, or both imprisonment and a fine.

23 (b) If any of the following apply, the contractor or  
24 subcontractor is guilty of a misdemeanor punishable by  
25 imprisonment for not more than 1 year or a fine of not more than  
26 \$2,000.00 or 3 times the statement amount, whichever is greater,  
27 or both imprisonment and a fine:

1           (i) The statement involved is for \$200.00 or more but less  
2 than \$1,000.00.

3           (ii) The statement involved is for less than \$200.00 and the  
4 contractor or subcontractor has 1 or more prior convictions for  
5 committing or attempting to commit an offense under this act.

6           (c) If any of the following apply, the contractor or  
7 subcontractor is guilty of a felony punishable by imprisonment  
8 for not more than 5 years or a fine of not more than \$10,000.00  
9 or 3 times the statement amount, whichever is greater, or both  
10 imprisonment and a fine:

11           (i) The statement involved is for \$1,000.00 or more but less  
12 than \$20,000.00.

13           (ii) The statement involved is for more than \$200.00 but less  
14 than \$1,000.00 and the contractor or subcontractor has 1 or more  
15 prior convictions for violating or attempting to violate this  
16 act. For purposes of this subparagraph, however, a prior  
17 conviction does not include a conviction for a violation or  
18 attempted violation described in subdivision (a) or (b) (ii).

19           (d) If any of the following apply, the contractor or  
20 subcontractor is guilty of a felony punishable by imprisonment  
21 for not more than 10 years or a fine of not more than \$15,000.00  
22 or 3 times the statement amount, whichever is greater, or both  
23 imprisonment and a fine:

24           (i) The statement involved is for \$20,000.00 or more.

25           (ii) The statement involved is for \$1,000.00 or more but less  
26 than \$20,000.00 and the contractor or subcontractor has 2 or more  
27 prior convictions for committing or attempting to commit an

1 offense under this act. For purposes of this subparagraph,  
2 however, a prior conviction does not include a conviction for a  
3 violation or attempted violation described in subdivision (a) or  
4 (b) (ii) .

5 (12) For purposes of subsection (11), statements involved in  
6 separate incidents pursuant to a scheme or course of conduct  
7 within any 12-month period may be aggregated to determine the  
8 total amount involved in the statements.

9 (13) If the prosecuting attorney intends to seek an enhanced  
10 sentence for a violation under this section based upon the  
11 defendant having 1 or more prior convictions, the prosecuting  
12 attorney shall include in the complaint and information a  
13 statement listing the prior conviction or convictions. The  
14 existence of the defendant's prior conviction or convictions  
15 shall be determined by the court, without a jury, at sentencing  
16 or at a separate hearing for that purpose before sentencing. The  
17 existence of a prior conviction may be established by any  
18 evidence relevant for that purpose, including, but not limited  
19 to, 1 or more of the following:

20 (a) A copy of the judgment of conviction.

21 (b) A transcript of a prior trial, plea-taking, or  
22 sentencing.

23 (c) Information contained in a presentence report.

24 (d) The defendant's statement.

25 (14) If the sentence for a conviction under this section is  
26 enhanced by 1 or more convictions, those prior convictions shall  
27 not be used to further enhance the sentence for the conviction

1 pursuant to section 10, 11, or 12 of chapter IX of the code of  
2 criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

3       **(15) THIS SECTION DOES NOT APPLY IF THE REAL ESTATE INVOLVED**  
4 **IS A RESIDENTIAL STRUCTURE. A CONTRACTOR OR SUBCONTRACTOR SHALL**  
5 **NOT PROVIDE A SWORN STATEMENT TO AN OWNER OR LESSEE FOR**  
6 **IMPROVEMENTS PROVIDED TO A RESIDENTIAL STRUCTURE.**

7       Sec. 115. (1) A person shall not require, as part of any  
8 contract for an improvement, that the right to a construction  
9 lien be waived in advance of work performed. A waiver obtained as  
10 part of a contract for an improvement is contrary to public  
11 policy, and ~~shall be~~ **IS** invalid, except to the extent that  
12 payment for labor and material furnished was actually made to the  
13 person giving the waiver. Acceptance by a lien claimant of a  
14 promissory note or other evidence of indebtedness from an owner,  
15 lessee, or contractor ~~shall~~ **DOES** not of itself ~~serve to~~ waive or  
16 discharge otherwise valid construction lien rights.

17       (2) A lien claimant who receives full payment for his or her  
18 contract shall provide to the owner, lessee, or designee a full  
19 unconditional waiver of lien.

20       (3) A lien claimant who receives partial payment for his or  
21 her contract shall provide to the owner, lessee, or designee a  
22 partial unconditional waiver of the lien for the amount ~~which the~~  
23 lien claimant has received, if the owner, lessee, or designee  
24 requests the partial unconditional waiver.

25       (4) A partial conditional waiver of lien or a full  
26 conditional waiver of lien ~~shall be~~ **IS** effective upon payment of  
27 the amount indicated in the waiver.

1 (5) For purposes of this act, retainage that is not payable  
2 under a contract until the happening of a certain event in  
3 addition to the providing of an improvement is not due as of the  
4 date ~~of the providing of the improvement~~ **IS PROVIDED.**

5 (6) A waiver of a lien under this section ~~shall be~~ **IS**  
6 effective when a person makes payment relying on the waiver  
7 unless at the time payment was made the person making the payment  
8 has written notice that the consideration for the waiver has  
9 failed.

10 (7) Subject to subsection (8), an owner, lessee, or designee  
11 shall not rely on a full or partial unconditional or conditional  
12 waiver of lien provided by a person other than the lien claimant  
13 named in the waiver if the lien claimant has either filed a  
14 notice of furnishing under section 109 or is excused from filing  
15 a notice of furnishing under section 108 ~~or 108a~~ unless the  
16 owner, lessee, or designee has first verified the authenticity of  
17 the lien waiver with the lien claimant either in writing, by  
18 telephone, or personally.

19 (8) An agent who is authorized to prepare and serve a notice  
20 of furnishing or to prepare, record, and serve a claim of lien on  
21 behalf of a laborer or group of laborers is automatically  
22 authorized to provide and responsible for providing waivers of  
23 lien, unless or until the laborer or group of laborers notifies  
24 the designee in writing that someone other than the agent is  
25 authorized to provide appropriate waivers. An individual laborer  
26 may also provide waivers under this section instead of the agent.

27 (9) The following forms shall be used in substantially the



1 following format to execute waivers of construction liens:

2 (a) **PARTIAL UNCONDITIONAL WAIVER**

3  
 4 I/we have a contract with ..... to  
 5 (other contracting party)  
 6 provide ..... for the improvement to the property  
 7 described as ....., and  
 8 by signing this waiver waive my/our construction lien to the  
 9 amount of \$ ....., for labor/materials provided  
 10 through .....  
 11 (date)

12  
 13 This waiver, together with all previous waivers, if any, (circle  
 14 one) does does not cover all amounts due to me/us for  
 15 contract improvement provided through the date shown above.

16  
 17 If the owner or lessee of the property or the owner's or lessee's  
 18 designee has received a notice of furnishing from me/one of us  
 19 or if I/we are not required to provide one, and the owner, lessee,  
 20 or designee has not received this waiver directly from me/one of  
 21 us, the owner, lessee, or designee may not rely upon it without  
 22 contacting me/one of us, either in writing, by telephone, or  
 23 personally, to verify that it is authentic.

24 .....  
 25 .....  
 26 (signature of lien claimant)

27  
 28 Signed on: ..... Address: .....  
 29 (date) .....  
 30 .....  
 31 Telephone: .....  
 32

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

(b) **PARTIAL CONDITIONAL WAIVER**

I/we have a contract with ..... to  
 (other contracting party)  
 provide ..... for the improvement to the property  
 described as: ....., and  
 by signing this waiver waive my/our construction lien to the  
 amount of \$ ..... , for labor/materials provided  
 through.....  
 (date)

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.

If the owner or lessee of the property or the owner's or lessee's  
 designee has received a notice of furnishing from me/one of us or  
 if I/we are not required to provide one, and the owner, lessee, or  
 designee has not received this waiver directly from me/one of us,  
 the owner, lessee, or designee may not rely upon it without  
 contacting me/one of us, either in writing, by telephone, or  
 personally, to verify that it is authentic.

.....  
 .....  
 (signature of lien claimant)

Signed on: ..... Address: .....  
 (date) .....

Telephone: .....

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

(c) **FULL UNCONDITIONAL WAIVER**

My/our contract with ..... to  
 (other contracting party)  
 provide ..... for the improvement of the property  
 described as: ..... has been  
 fully paid and satisfied. By signing this waiver, all my/our  
 construction lien rights against the described property  
 are waived and released.

If the owner or lessee of the property or the owner's or lessee's  
 designee has received a notice of furnishing from me/one of us or  
 if I/we are not required to provide one, and the owner, lessee,  
 or designee has not received this waiver directly from me/one of  
 us, the owner, lessee, or designee may not rely upon it without  
 contacting me/one of us, either in writing, by telephone, or  
 personally, to verify that it is authentic.

.....  
 .....  
 (signature of lien claimant)

Signed on: ..... Address: .....  
 (date)  
 .....  
 Telephone: .....

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

(d) **FULL CONDITIONAL WAIVER**

1  
 2 My/our contract with ..... to  
 3 ..... (other contracting party)  
 4 provide ..... for the improvement of the property  
 5 described as: ..... has been  
 6 fully paid and satisfied. By signing this waiver, all my/our  
 7 construction lien rights against the described property  
 8 are waived and released.

9  
 10 This waiver is conditioned on actual payment of ..... .

11  
 12 If the owner or lessee of the property or the owner's or lessee's  
 13 designee has received a notice of furnishing from me/one of us or  
 14 if I/we are not required to provide one, and the owner, lessee,  
 15 or designee has not received this waiver directly from me/one of  
 16 us, the owner, lessee, or designee may not rely upon it without  
 17 contacting me/one of us, either in writing, by telephone, or  
 18 personally, to verify that it is authentic.

19 .....  
 20 .....  
 21 (signature of lien claimant)

22  
 23 Signed on: ..... Address: .....  
 24 (date) .....  
 25 .....  
 26 Telephone: .....  
 27

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

29 Sec. 119. (1) Except as otherwise provided by subsection  
 30 (4), as between parties entitled to claim construction liens  
 31 under this act, their claims of lien shall be treated as having  
 32 equal priority.

(2) A construction lien under this act ~~shall take~~ **TAKES** priority over all garnishments for the contract debt made after commencement of the first actual physical improvement, without regard to the date ~~of recording of~~ the claim of lien **IS RECORDED**.

(3) A construction lien ~~arising~~ under this act ~~shall take~~ **TAKES** priority over all other interests, liens, or encumbrances ~~which~~ **THAT** may attach to the building, structure, or improvement, or upon the real property on which the building, structure, or improvement is erected, ~~when~~ **IF** the other interests, liens, or encumbrances are recorded ~~subsequent to~~ **AFTER** the first actual physical improvement.

(4) A mortgage, lien, encumbrance, or other interest recorded before the first actual physical improvement to real property ~~shall have~~ **HAS** priority over a construction lien ~~arising~~ under this act. The priority of the mortgage ~~shall exist~~ **EXISTS** as to all obligations secured by the mortgage except for indebtedness arising out of advances made ~~subsequent to~~ **AFTER** the first actual physical improvement. An advance made pursuant to the mortgage, but ~~subsequent to~~ **AFTER** the first actual physical improvement ~~shall have~~ **HAS** priority over a construction lien if, for that advance, the mortgagee has received a contractor's sworn statement as provided in section 110, has made disbursements pursuant to the contractor's sworn statement, and has received waivers of lien from the contractor and all subcontractors, laborers, and suppliers who have provided notices of furnishing. The construction lien of any lien claimant not set forth on the sworn statement upon which an advance was made ~~shall be~~ **IS**

1 subordinate to the lien of the mortgage, including the advance,  
 2 unless ~~prior to~~**BEFORE** the advance the lien claimant ~~has~~ provided  
 3 the designee ~~with~~ a notice of furnishing if required by section  
 4 109 or ~~has~~ recorded a claim of lien. Any advance made after a  
 5 notice of furnishing has been provided or has been excused as  
 6 provided in sections 108 , ~~108a~~, and 109 or a claim of lien has  
 7 been recorded ~~shall be~~**IS** subordinate to the construction lien of  
 8 that lien claimant unless ~~prior to~~**BEFORE** the advance the  
 9 mortgagee has received from that lien claimant either a full  
 10 unconditional waiver of lien or a partial unconditional waiver of  
 11 lien for the full amount due the lien claimant as of the date  
 12 through which the lien is waived as shown on the lien waiver and  
 13 the date through which the lien is waived as shown on the partial  
 14 unconditional waiver is within 30 days ~~prior to~~**BEFORE** the  
 15 advance.

16 (5) For purposes of this section, retainage ~~which~~**THAT** is  
 17 not payable under a contract until the happening of a certain  
 18 event in addition to the providing of an improvement , ~~is not due~~  
 19 as of the date ~~of the providing of the improvement~~ **IS PROVIDED.**

20 Sec. 203. (1) A claim of construction lien does not attach  
 21 to a residential structure, to the extent payments have been  
 22 made, if the owner or lessee files an affidavit with the court  
 23 indicating that the owner or lessee has done all of the  
 24 following:

25 (a) Paid the contractor for the improvement to the  
 26 residential structure according to the contract, indicating in  
 27 the affidavit the amount of the payment. The owner or lessee

1 shall attach to the affidavit copies of the contract, any change  
2 orders, and any evidence of the payment that the owner or lessee  
3 has, including, but not limited to, a canceled check or a credit  
4 card or other receipt.

5 (b) Not colluded with any person to obtain a payment from  
6 the fund.

7 (c) Cooperated and will continue to cooperate with the  
8 department in the defense of the fund.

9 (2) If there is no written contract as required by section  
10 114, the filing of an affidavit under this section creates a  
11 rebuttable presumption that the owner or lessee has paid the  
12 contractor for the improvement. The presumption may be overcome  
13 only by a showing of clear and convincing evidence to the  
14 contrary.

15 (3) Subject to section 204, a person who has recorded a  
16 claim of lien and who is precluded from having a construction  
17 lien under subsection (1) may recover from the fund the amount he  
18 or she would have been entitled to recover but for subsection  
19 (1). A person who seeks recovery from the fund shall establish  
20 all of the following:

21 (a) That he or she would be entitled to a construction lien  
22 on a residential structure except for the defense provided in  
23 subsection (1).

24 (b) That payment was made by the owner or lessee to the  
25 contractor or subcontractor.

26 (c) That the contractor or subcontractor has retained or  
27 used the proceeds or any part of the proceeds paid to the

1 contractor or subcontractor without having paid the person  
2 claiming the construction lien.

3 (d) That he or she has complied with section 201.

4 (e) That he or she has not colluded with another person to  
5 obtain a payment from the fund.

6 (f) That he or she has complied with any applicable  
7 licensing acts.

8 (g) That he or she has made a reasonable effort to obtain  
9 payment from the contractor or subcontractor.

10 (h) That the contractor or subcontractor with whom the  
11 person claiming the construction lien contracted is licensed if  
12 required by law to be licensed.

13 (i) That the contractor or subcontractor with whom the  
14 person claiming the construction lien contracted is the same  
15 individual or legal entity with whom the owner or lessee  
16 contracted.

17 (j) If the person claiming the construction lien is a  
18 supplier, that he or she has documentary proof that, unless the  
19 supplier had provided material or equipment to the contractor or  
20 subcontractor within the preceding year, before he or she  
21 provided the material or equipment that is the subject of the  
22 lien without obtaining advance payment in full, he or she did  
23 both of the following:

24 (i) Required the contractor or subcontractor to whom he or  
25 she provided the material or equipment to complete and submit a  
26 credit application.

27 (ii) Before beginning to supply material or equipment to the



1 contractor or subcontractor without obtaining advance payment in  
2 full, did either of the following, as applicable:

3 (A) If the contractor or subcontractor is a corporation  
4 whose shares are publicly traded, obtained a report on the  
5 contractor or subcontractor from a nationally or regionally  
6 recognized organization that provides credit ratings of  
7 businesses to determine the financial stability of the contractor  
8 or subcontractor.

9 (B) If sub-subparagraph (A) does not apply, did both of the  
10 following:

11 (I) Obtained a credit report on the owner or qualifying  
12 officer or the principal partners, officers, shareholders, or  
13 members of the contractor or subcontractor to determine the  
14 financial stability of the contractor or subcontractor.

15 (II) If the contractor or subcontractor is less than 4 years  
16 old, obtained a personal guaranty from the owner or 1 or more of  
17 the partners, officers, directors, managing members, trustees, or  
18 shareholders of the contractor or subcontractor.

19 (k) If the person claiming the construction lien is a  
20 supplier seeking to recover for material or equipment supplied to  
21 a contractor or subcontractor without obtaining advance payment  
22 in full, that a credit report obtained by the supplier on the  
23 contractor or subcontractor did not disclose any of the  
24 following:

25 (i) That the contractor or subcontractor was, at the time of  
26 the application, or had been, within 2 years before the  
27 application, insolvent.

1           (ii) That the contractor or subcontractor was, at the time of  
2 the application, subject to a receivership.

3           (iii) Total delinquent judgments of more than \$1,000.00.

4           (4) A subcontractor, supplier, or laborer who seeks  
5 enforcement of a construction lien on a residential structure  
6 through foreclosure shall join the fund as a defendant in the  
7 foreclosure action within the period provided in section 117(1).  
8 The subcontractor, supplier, or laborer shall serve a summons and  
9 complaint on the office of the fund administrator within the  
10 department by certified or registered mail or by leaving a copy  
11 at the office. The failure to serve a summons and complaint under  
12 this subsection bars recovery from the fund. After a defendant is  
13 served with a summons and complaint in an action to foreclose a  
14 construction lien, the department may intervene in the action as  
15 a party defendant with respect to other construction liens.

16           (5) The attorney general shall make every reasonable effort  
17 to defend the fund and may assert any defense to a claim of lien  
18 that would have been available to the owner or lessee.

19           (6) A payment from the fund shall not include interest on  
20 the unpaid principal amount due, including, but not limited to, a  
21 time-price differential or a finance charge, that accrued after  
22 90 days after the claim of lien was recorded.

23           (7) A payment from the fund to a supplier shall not include  
24 money due for material or equipment supplied to a contractor or  
25 subcontractor without obtaining advance payment in full if either  
26 of the following applies:

27           (a) The contractor or subcontractor was delinquent in paying

1 the supplier for material or equipment for more than ~~the~~  
2 ~~following number of 180~~ days after the first business day of the  
3 month following the shipment of the material or equipment. +

4 ~~—— (i) In 2007, 180 days.~~

5 ~~—— (ii) In 2008, 150 days.~~

6 ~~—— (iii) In 2009, 120 days.~~

7 ~~—— (iv) In 2010 and each year after 2010, 90 days.~~

8 (b) The contractor or subcontractor was indebted to the  
9 supplier in an amount equal to or more than the credit limit  
10 established by the supplier for the contractor or subcontractor  
11 at the time the material or equipment was supplied.

12 (8) Payment from the fund shall be made only if the court  
13 finds that a subcontractor, supplier, or laborer is entitled to  
14 payment from the fund. Subject to section 204, after the judgment  
15 has become final the department shall pay the amount of the  
16 judgment out of the fund.