

SENATE BILL No. 465

June 15, 2017, Introduced by Senators BOOHER, PROOS, NOFS, JONES, MACGREGOR and HERTEL and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1980 PA 497, entitled "Construction lien act," by amending sections 104, 106, 108, 108a, 109, 112, and 119 (MCL 570.1104, 570.1106, 570.1108, 570.1108a, 570.1109, 570.1112, and 570.1119), sections 104 and 106 as amended by 2010 PA 147 and sections 108, 109, and 119 as amended and section 108a as added by 1982 PA 17, and by adding sections 107a and 107b; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 104. (1) "Court" means the circuit court in which an
2 action to enforce a construction lien through foreclosure is
3 pending.

4 (2) "DESIGN PROFESSIONAL" MEANS AN INDIVIDUAL WHO IS LICENSED
5 OR REGISTERED AS AN ARCHITECT, PROFESSIONAL ENGINEER, OR
6 PROFESSIONAL SURVEYOR UNDER ARTICLE 20 OF THE OCCUPATIONAL CODE,

1 1980 PA 299, MCL 339.2001 TO 339.2014, OR A CORPORATION,
2 PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER LEGAL ENTITY THAT
3 IS AUTHORIZED UNDER ARTICLE 20 OF THE OCCUPATIONAL CODE, 1980 PA
4 299, MCL 339.2001 TO 339.2014, TO ENGAGE IN THE PRACTICE OF ANY OF
5 THESE PROFESSIONS.

6 (3) ~~(2)~~—"Designee" means ~~the~~A person named by an owner or
7 lessee to receive, on behalf of the owner or lessee, all notices or
8 other instruments required to be furnished under this act. The
9 owner or lessee may name himself or herself as designee. The owner
10 or lessee may not name the contractor as designee. However, a
11 contractor who is providing only architectural or engineering
12 services may be named as designee.

13 (4) ~~(3)~~—"Fringe benefits and withholdings" means compensation
14 due an employee pursuant to a written contract or written policy
15 for holiday, time off for sickness or injury, time off for personal
16 reasons or vacation, bonuses, authorized expenses incurred during
17 the course of employment, and any other contributions made to or on
18 behalf of an employee.

19 (5) ~~(4)~~—"General contractor" means a contractor who contracts
20 with an owner or lessee to provide, directly or indirectly through
21 contracts with subcontractors, suppliers, or laborers,
22 substantially all of the improvements to the property described in
23 the notice of commencement.

24 (6) ~~(5)~~—"Improvement" means the result of labor or material
25 provided by a contractor, subcontractor, supplier, or laborer,
26 including, but not limited to, surveying, engineering and
27 architectural planning, construction management, clearing,

1 demolishing, excavating, filling, building, erecting, constructing,
2 altering, repairing, ornamenting, landscaping, paving, leasing
3 equipment, ~~or~~ **AND** installing or affixing a fixture or material,
4 pursuant to a contract.

5 (7) ~~(6)~~ "Laborer" means an individual who, pursuant to a
6 contract with a contractor or subcontractor, provides an
7 improvement to real property through the individual's personal
8 labor.

9 Sec. 106. (1) "Person" means an individual, corporation,
10 partnership, ~~sole proprietorship,~~ association, other legal entity,
11 or any combination thereof. **OF THESE.**

12 (2) **"PROFESSIONAL SERVICES" MEANS SERVICES THAT ARE**
13 **CUSTOMARILY AND LEGALLY PERFORMED BY OR UNDER THE SUPERVISION OR**
14 **RESPONSIBLE CONTROL OF DESIGN PROFESSIONALS IN THE COURSE OF THEIR**
15 **PROFESSIONAL PRACTICE, INCLUDING, BUT NOT LIMITED TO, PROGRAMMING,**
16 **PLANNING, SURVEYING, SITE INVESTIGATION, ANALYSIS, ASSESSMENT,**
17 **DESIGN, PREPARATION OF DRAWINGS AND SPECIFICATIONS, AND**
18 **CONSTRUCTION ADMINISTRATION SERVICES.**

19 (3) ~~(2)~~ "Project" means the aggregate of improvements
20 contracted for by the contracting owner.

21 (4) ~~(3)~~ "Residential structure" means an individual
22 residential condominium unit or a residential building containing
23 not more than 2 residential units, the land on which it is or will
24 be located, and all appurtenances, in which the owner or lessee
25 contracting for the improvement is residing or will reside ~~upon~~ **ON**
26 completion of the improvement.

27 (5) ~~(4)~~ "Subcontractor" means a person, other than a laborer

1 or supplier, who pursuant to a contract between himself or herself
 2 and a person other than the owner or lessee performs any part of a
 3 contractor's contract for an improvement.

4 (6) ~~(5)~~—"Supplier" means a person who, pursuant to a contract
 5 with a contractor or a subcontractor, leases, rents, or in any
 6 other manner provides material or equipment that is used in the
 7 improvement of real property. **SUPPLIER DOES NOT INCLUDE A DESIGN
 8 PROFESSIONAL OR A PERSON THAT HAS A SUBCONTRACT WITH A DESIGN
 9 PROFESSIONAL AS DESCRIBED IN SECTION 107B.**

10 (7) ~~(6)~~—"Wages" means all earnings of an employee, whether
 11 determined on the basis of time, task, piece, commission, or other
 12 method of calculation, for labor or services, except fringe
 13 benefits and withholdings.

14 **SEC. 107A. (1) A DESIGN PROFESSIONAL WHO ENTERS INTO A WRITTEN
 15 CONTRACT WITH AN OWNER, OR WITH A PERSON ACTING FOR, ON BEHALF OF,
 16 OR WITH THE CONSENT OF THE OWNER, TO PROVIDE PROFESSIONAL SERVICES
 17 RELATING TO THE PROPOSED OR ACTUAL ERECTION, ALTERATION, REPAIR, OR
 18 REMOVAL OF A STRUCTURE ON OR OTHER IMPROVEMENT TO REAL PROPERTY MAY
 19 FILE A NOTICE FOR RECORDING WITH THE REGISTER OF DEEDS FOR THE
 20 COUNTY IN WHICH THE PROPERTY IS LOCATED. THE NOTICE MUST BE IN
 21 SUBSTANTIALLY THE FOLLOWING FORM:**

22 **NOTICE OF PROFESSIONAL SERVICES CONTRACT**
 23 **UNDER A WRITTEN CONTRACT DATED _____**
 24 **BETWEEN _____, OWNER, AND _____,**
 25 **DESIGN PROFESSIONAL, THE DESIGN PROFESSIONAL IS TO FURNISH OR**
 26 **HAS FURNISHED PROFESSIONAL SERVICES RELATING TO THE PROPOSED OR**
 27 **ACTUAL ERECTION, ALTERATION, REPAIR, OR REMOVAL OF A STRUCTURE**

1 ON OR OTHER IMPROVEMENT TO REAL PROPERTY DESCRIBED AS FOLLOWS:

2 INSERT DESCRIPTION OF SERVICES

3 THE LEGAL DESCRIPTION OF THE REAL PROPERTY IS AS FOLLOWS:

4 INSERT LEGAL DESCRIPTION

5 (2) A DESIGN PROFESSIONAL MAY FILE A NOTICE UNDER SUBSECTION

6 (1) AT ANY TIME AFTER THE WRITTEN CONTRACT IS EXECUTED REGARDLESS

7 OF WHETHER THE PROFESSIONAL SERVICES UNDER THE WRITTEN CONTRACT

8 HAVE BEEN COMMENCED OR COMPLETED, AND REGARDLESS OF WHETHER THE

9 ERECTION, ALTERATION, REPAIR, OR REMOVAL OF THE STRUCTURE OR THE

10 OTHER IMPROVEMENT TO WHICH THE PROFESSIONAL SERVICES RELATE HAS

11 BEEN, OR IS EVER, COMMENCED OR COMPLETED. HOWEVER, A DESIGN

12 PROFESSIONAL SHALL NOT FILE A NOTICE LATER THAN 90 DAYS AFTER THE

13 DESIGN PROFESSIONAL, OR ANOTHER PERSON ACTING BY, THROUGH, OR UNDER

14 THE DESIGN PROFESSIONAL, LAST PERFORMED PROFESSIONAL SERVICES.

15 SEC. 107B. (1) A PERSON THAT FURNISHES PROFESSIONAL SERVICES

16 UNDER A WRITTEN SUBCONTRACT WITH A DESIGN PROFESSIONAL WHO HAS

17 FILED A NOTICE UNDER SECTION 107A, AND WHOSE ENGAGEMENT HAS BEEN

18 APPROVED IN WRITING BY OR ON BEHALF OF THE OWNER OF THE PROPERTY,

19 MAY FILE FOR RECORDING WITH THE REGISTER OF DEEDS FOR THE COUNTY IN

20 WHICH THE PROPERTY IS LOCATED A NOTICE OF THE SUBCONTRACT IN

21 SUBSTANTIALLY THE FOLLOWING FORM:

22 NOTICE OF PROFESSIONAL SERVICES SUBCONTRACT

23 UNDER A WRITTEN SUBCONTRACT DATED _____

24 BETWEEN _____, DESIGN PROFESSIONAL,

25 AND _____, AS SUB-DESIGN PROFESSIONAL,

26 _____ IS TO FURNISH OR HAS FURNISHED

27 PROFESSIONAL SERVICES RELATING TO THE PROPOSED OR ACTUAL

1 ERECTION, ALTERATION, REPAIR, OR REMOVAL OF A STRUCTURE ON OR
2 OTHER IMPROVEMENT TO REAL PROPERTY DESCRIBED AS FOLLOWS, WHICH
3 SERVICES ARE A PORTION OF THE SERVICES FURNISHED OR TO BE
4 FURNISHED BY THE DESIGN PROFESSIONAL UNDER A WRITTEN ORIGINAL
5 CONTRACT WITH _____, THE OWNER:

6 INSERT DESCRIPTION OF SERVICES RENDERED

7 THE LEGAL DESCRIPTION OF THE REAL PROPERTY IS AS FOLLOWS:

8 INSERT LEGAL DESCRIPTION

9 AT THE TIME OF THIS NOTICE, AN ACCOUNT OF THE SUBCONTRACT IS AS
10 FOLLOWS:

11 1. ESTIMATED OR AGREED CONTRACT PRICE: _____

12 2. APPROVED EXTRA OR ADDITIONAL SERVICES: _____

13 3. PAYMENTS RECEIVED: _____

14 THE REGULAR MAILING ADDRESS OF THE SUBCONTRACTING PARTY

15 RECORDING OR FILING THIS NOTICE IS AS FOLLOWS:

16 INSERT ADDRESS

17 (2) A PERSON ENTITLED TO FILE A NOTICE OF CONTRACT UNDER
18 SUBSECTION (1) MAY FILE THE NOTICE AT ANY TIME AFTER THE EXECUTION
19 OF THE WRITTEN SUBCONTRACT REGARDLESS OF WHETHER THE PROFESSIONAL
20 SERVICES UNDER THE WRITTEN SUBCONTRACT HAVE BEEN COMMENCED OR
21 COMPLETED, AND REGARDLESS OF WHETHER THE CONSTRUCTION, ALTERATION,
22 REPAIR OR REMOVAL OF THE STRUCTURE OR THE OTHER IMPROVEMENT TO
23 WHICH THE PROFESSIONAL SERVICES RELATE HAS BEEN, OR IS EVER,
24 COMMENCED OR COMPLETED. HOWEVER, THE PERSON SHALL NOT FILE THE
25 NOTICE LATER THAN 90 DAYS AFTER THE LAST DAY A DESIGN PROFESSIONAL
26 WHO IS ENTITLED TO FILE A NOTICE UNDER THIS SECTION OR SECTION
27 107A, OR ANY PERSON CLAIMING BY, THROUGH, OR UNDER THE DESIGN

1 **PROFESSIONAL, PERFORMED PROFESSIONAL SERVICES FOR THE PROJECT.**

2 Sec. 108. (1) Before the commencement of any ~~actual physical~~
 3 improvements to real property, the owner or lessee contracting for
 4 the improvements shall record in the office of the register of
 5 deeds for each county in which the real property to be improved is
 6 located a notice of commencement, in the form set forth in this
 7 section. If all improvements relate to a single project only 1
 8 notice of commencement need be recorded. A subsequent notice of
 9 commencement need not be recorded for an improvement to ~~any~~-real
 10 property ~~which~~-**THAT** currently has a notice of commencement recorded
 11 in the office of the register of deeds if ~~that~~-**THE** recorded notice
 12 of commencement contains the same information as the subsequent
 13 notice of commencement.

14 (2) ~~The~~-**A** notice of commencement ~~shall~~-**REQUIRED UNDER THIS**
 15 **SECTION MUST** contain the following information:

16 (a) The legal description of the real property on which the
 17 improvement is to be made. A description ~~conforming~~-**THAT CONFORMS**
 18 to section 212 or 255 of ~~Act No. 288 of the Public Acts of 1967,~~
 19 ~~being sections~~-**THE LAND DIVISION ACT, 1967 PA 288, MCL 560.212 and**
 20 ~~560.255, of the Michigan Compiled Laws, shall be~~-**IS** a sufficient
 21 legal description.

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

24 (c) The name and address of the fee owner of the real
 25 property, if the person contracting for the improvement is a land
 26 contract vendee or lessee.

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

1 (e) The name and address of the general contractor, if any.

2 (f) The following statement:

3 "To lien claimants and subsequent purchasers:

4 Take notice that work is about to commence on an improvement
5 to the real property described in this instrument. A person ~~having~~
6 **THAT HAS** a construction lien may preserve the lien by providing a
7 notice of furnishing to the ~~above named~~ designee **NAMED ABOVE** and
8 the general contractor, if any, and by timely recording a claim of
9 lien, in accordance with law.

10 A person ~~having~~ **THAT HAS** a construction lien ~~arising by virtue~~
11 **BECAUSE** of work performed on this improvement should refer to the
12 name of the owner or lessee and the legal description ~~appearing~~
13 **THAT APPEARS** in this notice. A person **THAT** subsequently ~~acquiring~~
14 **ACQUIRES** an interest in the land described is not required to be
15 named in a claim of lien.

16 A copy of this notice with an attached form for notice of
17 furnishing may be obtained ~~upon~~ **BY** making a written request by
18 certified mail to the ~~above named~~ owner or lessee **NAMED ABOVE**; the
19 designee; or the person with whom you have contracted."

20 (g) The name and address of the person preparing the notice.

21 (h) An affidavit of the owner or lessee or the agent of the
22 owner or lessee ~~which~~ **THAT** verifies the notice.

23 (3) ~~Each~~ **A** copy of the ~~A~~ notice of commencement ~~shall~~ **REQUIRED**
24 **UNDER THIS SECTION MUST** have a blank notice of furnishing as
25 described in section 109 attached to it. The blank notice of
26 furnishing ~~shall~~ **MUST** be easily detachable from the copy of the
27 notice and need not be recorded.

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

5 (5) ~~The~~**AN** owner, lessee, or designee **REQUIRED TO RECORD A**
6 **NOTICE OF COMMENCEMENT UNDER THIS SECTION**, within 10 days after the
7 date of mailing of a written request by certified mail from a
8 subcontractor, supplier, or laborer, shall provide a copy of the
9 notice of commencement, ~~together~~ with an attached blank notice of
10 furnishing form, to the subcontractor, supplier, or laborer.
11 ~~requesting a copy of the notice of commencement.~~

12 (6) A contractor who has been provided with a notice of
13 commencement from ~~the~~**AN** owner, lessee, or designee, within 10 days
14 after the date of mailing of a written request by certified mail
15 from a subcontractor, supplier, or laborer who has a direct
16 contract with the contractor, shall provide a copy of the notice of
17 commencement, ~~together~~ with an attached blank notice of furnishing
18 form, to the subcontractor, supplier, or laborer. ~~requesting a copy~~
19 ~~of the notice of commencement.~~

20 (7) A subcontractor who has been provided with a notice of
21 commencement from ~~the~~**AN** owner, lessee, designee, contractor, or
22 subcontractor, within 10 days after the date of mailing of a
23 written request by certified mail from a subcontractor, supplier,
24 or laborer who has a direct contract with the subcontractor, shall
25 provide a copy of the notice of commencement, ~~together~~ with an
26 attached blank notice of furnishing form, to the **REQUESTING**
27 subcontractor, supplier, or laborer. ~~requesting a copy of the~~

1 ~~notice of commencement.~~

2 (8) ~~The~~**AN** owner, lessee, or designee **REQUIRED TO RECORD A**
 3 **NOTICE OF COMMENCEMENT UNDER THIS SECTION** shall post and keep
 4 posted a copy of the notice of commencement in a conspicuous place
 5 on the real property described in the notice during the course of
 6 the ~~actual physical improvement~~ to the real property.

7 (9) ~~The~~**AN** owner, lessee, or designee **REQUIRED TO RECORD A**
 8 **NOTICE OF COMMENCEMENT UNDER THIS SECTION** shall provide a copy of
 9 the notice of commencement to the general contractor, if any.

10 ~~Failure of the~~**AN** owner, lessee, or designee **THAT FAILS** to provide
 11 the notice of commencement to the general contractor ~~shall render~~
 12 ~~the owner or lessee~~**IS** liable to the general contractor for all
 13 actual expenses sustained by the general contractor in obtaining
 14 the information otherwise provided by the notice of commencement.

15 (10) Failure of ~~the~~**AN** owner, lessee, or designee to record
 16 ~~the~~**A** notice of commencement ~~, in accordance with~~**AS REQUIRED BY**
 17 this section ~~, shall operate to extend~~**EXTENDS** the time within
 18 which a subcontractor or supplier may provide a notice of
 19 furnishing, as described in section 109, until 20 days after the
 20 notice of commencement has been recorded.

21 (11) Failure of ~~the~~**AN** owner, lessee, or designee to provide,
 22 ~~upon~~**ON** written request, ~~the~~**A** notice of commencement ~~, in~~
 23 ~~accordance with~~**AS REQUIRED BY** this section ~~, shall operate to~~
 24 ~~extend~~**EXTENDS** the time within which a subcontractor or supplier
 25 may provide a notice of furnishing, as described in section 109,
 26 until 20 days after the notice of commencement actually has been
 27 furnished to the subcontractor or supplier.

1 (12) Failure of ~~the~~**AN** owner, lessee, or designee to record
2 ~~the~~**A** notice of commencement ~~, in accordance with~~**AS REQUIRED BY**
3 this section ~~, shall operate to extend~~**EXTENDS** the time within
4 which a laborer may provide a notice of furnishing, as described in
5 section 109, until 30 days after the notice of commencement has
6 been recorded, or until the time in which to provide the notice of
7 furnishing in accordance with section 109 expires, whichever is
8 later.

9 (13) Failure of ~~the~~**AN** owner, lessee, or designee to provide
10 ~~the~~**A** notice of commencement ~~, in accordance with~~**AS REQUIRED BY**
11 this section ~~, shall operate to extend~~**EXTENDS** the time within
12 which a laborer may provide a notice of furnishing, as described in
13 section 109, until 30 days after the notice of commencement has
14 been provided, or until the time in which to provide the notice of
15 furnishing in accordance with section 109 expires, whichever is
16 later.

17 (14) ~~Failure of the~~**AN** owner, lessee, or designee **THAT FAILS**
18 to post or keep posted a copy of ~~the~~**A** notice of commencement as
19 ~~provided in~~**REQUIRED BY** subsection (8) ~~shall render the owner or~~
20 ~~lessee~~**IS** liable to a subcontractor, supplier, or laborer who
21 becomes a lien claimant for all actual expenses sustained by the
22 lien claimant in obtaining the information otherwise provided by
23 the posting.

24 (15) ~~Failure of a~~**A** contractor ~~, who has been provided with a~~
25 notice of commencement from ~~the~~**AN** owner, lessee, or designee, **WHO**
26 **FAILS** to provide the notice of commencement ~~upon~~**ON** the request of
27 a lien claimant who has a direct contract with the contractor for

1 an improvement to **THE** property ~~shall render the contractor~~ **IS**
2 liable to the lien claimant for all actual expenses sustained by
3 the lien claimant in obtaining the information otherwise provided
4 by the notice of commencement.

5 (16) ~~Failure of a~~ **A** subcontractor, ~~who has been provided with~~
6 a notice of commencement from ~~the~~ **AN** owner, lessee, designee,
7 contractor, or subcontractor **WHO FAILS** to provide the notice of
8 commencement ~~upon~~ **ON** the request of a subcontractor, supplier, or
9 laborer who has a direct contract with the subcontractor ~~shall~~
10 ~~render the subcontractor~~ **IS** liable to ~~such~~ **THE REQUESTING**
11 subcontractor, supplier, or laborer for all actual expenses
12 sustained by the subcontractor, supplier, or laborer in obtaining
13 the information otherwise provided by the notice of commencement.

14 (17) If the owner, lessee, or designee fails to provide,
15 record, and post the notice of commencement as provided in this act
16 and if, after the first ~~actual physical~~ improvement, the contractor
17 by certified mail makes a written request to the owner, lessee, or
18 designee to provide, record, and post the notice of commencement
19 and the owner, lessee, or designee fails within 10 days after
20 receipt of the request to do so, the owner or lessee ~~shall be~~ **IS**
21 barred from requiring the contractor to hold the owner or lessee
22 harmless from ~~liens~~ **THE LIEN** of **A** lien claimants ~~CLAIMANT~~ to the
23 extent ~~such~~ **THE** lien claims could have otherwise been avoided
24 through proper payment, ~~had such~~ **THE** request been complied with.
25 If the contractor pays a valid lien claim at the direction of the
26 owner, lessee, or designee after the owner, lessee, or designee has
27 failed to comply with this section, the owner or lessee ~~shall be~~ **IS**

1 liable to the contractor to the extent the lien ~~claim~~ could have
 2 otherwise been avoided through proper payment had ~~such~~ **THE** request
 3 been complied with. This subsection ~~shall~~ **DOES** not apply if the
 4 **NAME OF THE** lien claimant appears on a sworn statement provided to
 5 the contractor and the claim of the lien claimant ~~appearing on the~~
 6 ~~sworn statement~~ could have been avoided had payment been made in
 7 accordance with the sworn statement.

8 (18) This section ~~shall~~ **DOES** not apply to an improvement to a
 9 residential structure.

10 Sec. 108a. (1) An owner or lessee ~~contracting~~ **WHO CONTRACTS**
 11 for an improvement to a residential structure shall prepare and
 12 provide a notice of commencement to a contractor, subcontractor,
 13 supplier, or laborer who has made a written request for the notice
 14 ~~pursuant to~~ **AS PROVIDED IN** this section.

15 (2) ~~The~~ **A** notice of commencement ~~shall~~ **REQUIRED UNDER THIS**
 16 **SECTION MUST** contain the following information:

17 (a) The legal description of the real property on which the
 18 improvement is to be made. A description ~~conforming~~ **THAT CONFORMS**
 19 to section 212 or 255 of ~~Act No. 288 of the Public Acts of 1967,~~
 20 ~~being sections~~ **THE LAND DIVISION ACT, 1967 PA 288, MCL 560.212 and**
 21 ~~560.255, of the Michigan Compiled Laws, shall be~~ **IS** a sufficient
 22 legal description.

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

25 (c) The name and address of the fee owner of the real
 26 property, if the person contracting for the improvement is a land
 27 contract vendee or lessee.

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

2 (e) The name and address of the general contractor, if any.

3 The notice of commencement form ~~shall~~**MUST** contain the following

4 caption below the line for the general contractor's name and

5 address: (the name of the person with whom you have contracted to

6 provide substantially all the improvements to the property.)

7 (f) The following statement in boldface type on the front of

8 the form:

9

WARNING TO HOMEOWNER

10 Michigan law requires that you do the following:

11 1. Complete and return this form to the person who asked for
12 it within 10 days after the date of the postmark on the request.

13 2. If you do not complete and return this form within the 10
14 days you may have to pay the expenses incurred in getting the
15 information.

16 3. If you do not live at the site of the improvement, you must
17 post a copy of this form in a conspicuous place at that site.

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

19 1. Complete and post a copy of this form at the place where
20 the improvement is being made, even if you live there.

21 2. Make and keep a copy of this form for your own records.

22 (g) The following statement:

23 "To lien claimants and subsequent purchasers:

24 Take notice that work is about to commence on an improvement
25 to the real property described in this instrument. A person ~~having~~
26 **THAT HAS** a construction lien may preserve the lien by providing a
27 notice of furnishing to the ~~above-named~~ designee **NAMED ABOVE** and

1 the general contractor, if any, and by timely recording a claim of
2 lien, in accordance with law.

3 A person ~~having~~ **THAT HAS** a construction lien arising by virtue
4 **BECAUSE** of work performed on this improvement should refer to the
5 name of the owner or lessee and the legal description appearing in
6 this notice. A person ~~subsequently acquiring~~ **THAT SUBSEQUENTLY**
7 **ACQUIRES** an interest in the land described is not required to be
8 named in a claim of lien.

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

13 (h) The name and address of the person preparing the notice.

14 (i) An affidavit of the owner or lessee or the agent of the
15 owner or lessee ~~which~~ **THAT** verifies the notice.

16 (3) ~~Each~~ **A** copy of ~~the~~ **A** notice of commencement ~~shall~~ **REQUIRED**
17 **UNDER THIS SECTION MUST** have a blank notice of furnishing as
18 described in section 109 attached to it. The blank notice of
19 furnishing ~~shall~~ **MUST** be easily detachable from the copy of the
20 notice and need not be recorded.

21 (4) Incorrect information contained in ~~the~~ **A** notice of
22 commencement furnished by or for an owner or lessee ~~shall~~ **UNDER**
23 **THIS SECTION DOES** not affect adversely the rights of a lien
24 claimant as against the property of ~~that~~ **THE** owner or lessee.

25 (5) ~~The~~ **AN** owner, lessee, or designee **REQUIRED TO PROVIDE A**
26 **NOTICE OF COMMENCEMENT UNDER THIS SECTION**, within 10 days after the
27 date of mailing of a written request by certified mail from a

1 contractor, subcontractor, supplier, or laborer, shall prepare and
2 provide a copy of the notice of commencement, ~~together~~ with an
3 attached blank notice of furnishing form, to the contractor,
4 subcontractor, supplier, or laborer. ~~requesting a copy of the~~
5 ~~notice of commencement.~~ A contractor, subcontractor, supplier, or
6 laborer who requests a notice of commencement from an owner or
7 lessee of a residential structure shall supply a blank notice of
8 commencement form ~~together~~ with the attached blank notice of
9 furnishing to the owner or lessee at the time the request is made.

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

21 (7) A subcontractor who has been provided with a notice of
22 commencement **UNDER THIS SECTION** from the owner, lessee, designee,
23 **OR** contractor, or **ANOTHER** subcontractor, within 10 days after the
24 date of mailing of a written request by certified mail from a
25 subcontractor, supplier, or laborer who has a direct contract with
26 the subcontractor, shall provide a copy of the notice of
27 commencement, ~~together~~ with an attached blank notice of furnishing

1 form, to the **REQUESTING** subcontractor, supplier, or laborer.
2 ~~requesting a copy of the notice of commencement.~~ If the
3 subcontractor has not been provided a notice of commencement, the
4 subcontractor shall provide to ~~such~~ **THE REQUESTING** subcontractor,
5 supplier, or laborer, the name and address of the owner or lessee.

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

13 (9) Failure of ~~the~~ **AN** owner, lessee, or designee to provide,
14 ~~upon~~ **ON** written request, ~~the~~ **A** notice of commencement ~~, in~~
15 ~~accordance with~~ **AS REQUIRED BY** this section ~~, shall operate to~~
16 ~~extend~~ **EXTENDS** the time within which a subcontractor or supplier
17 may provide a notice of furnishing, as described in section 109,
18 until 20 days after the notice of commencement actually has been
19 furnished to the subcontractor or laborer.

20 (10) Failure of ~~the~~ **AN** owner, lessee, or designee to provide
21 ~~the~~ **A** notice of commencement ~~, in accordance with~~ **AS REQUIRED BY**
22 this section ~~, shall operate to extend~~ **EXTENDS** the time within
23 which a laborer may provide a notice of furnishing, as described in
24 section 109, until 30 days after the notice of commencement
25 actually has been furnished to the laborer, or until the time in
26 which to provide the notice of furnishing in accordance with
27 section 109 expires, whichever is later.

1 (11) ~~Failure of the~~ **AN** owner, lessee, or designee **THAT FAILS**
2 to post or keep posted a copy of ~~the~~ **A** notice of commencement as
3 ~~provided in~~ **REQUIRED BY** subsection (8) ~~shall render the owner or~~
4 ~~lessee~~ **IS** liable to a subcontractor, supplier, or laborer who
5 becomes a lien claimant for all actual expenses sustained by the
6 lien claimant in obtaining the information otherwise provided by
7 the posting.

8 (12) ~~Failure of a~~ **A** contractor, ~~who~~ **THAT** has been provided
9 with a notice of commencement from the owner, lessee, or designee, ~~who~~
10 **AND THAT FAILS** to provide the notice of commencement ~~upon~~ **ON** the
11 request of a lien claimant ~~who~~ **THAT** has a contract with the
12 contractor for an improvement to the property ~~shall render the~~
13 ~~contractor~~ **IS** liable to the lien claimant for all actual expenses
14 sustained by the lien claimant in obtaining the information
15 otherwise provided by the notice of commencement. ~~Failure of a~~ **A**
16 contractor **THAT FAILS** to provide the name and address of the owner
17 or lessee ~~in accordance with~~ **AS REQUIRED BY** subsection (6) ~~shall~~
18 ~~render the contractor~~ **IS** liable to the lien claimant for all actual
19 expenses sustained by the lien claimant in obtaining the name and
20 address of the owner or lessee.

21 (13) ~~Failure of a~~ **A** subcontractor, ~~who~~ **THAT** has been provided
22 with a notice of commencement from the owner, lessee, designee,
23 contractor, or subcontractor, ~~who~~ **AND THAT FAILS** to provide the notice
24 of commencement ~~upon~~ **ON** the request of a subcontractor, supplier,
25 or laborer who has a direct contract with the subcontractor ~~shall~~
26 ~~render the subcontractor~~ **IS** liable to ~~such~~ **THE** subcontractor,
27 supplier, or laborer for all actual expenses sustained by the

1 subcontractor, supplier, or laborer in obtaining the information
 2 otherwise provided by the notice of commencement. ~~Failure of a~~ **A**
 3 subcontractor **THAT FAILS** to provide the name and address of the
 4 owner or lessee ~~in accordance with~~ **AS REQUIRED BY** subsection ~~(6)~~
 5 ~~shall render the subcontractor~~ **(7) IS** liable to the lien claimant
 6 for all actual expenses sustained by the lien claimant in obtaining
 7 the name and address of the owner or lessee.

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

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

24 (2) Except as otherwise provided in sections 108 and 108a, a
 25 laborer who contracts to provide an improvement to real property
 26 shall provide a notice of furnishing to the designee and the
 27 general contractor, if any, as named in the notice of commencement

1 at the address shown in the notice of commencement, either
2 personally or by mail, within 30 days after wages were
3 contractually due but were not paid. If a designee has not been
4 named in the notice of commencement, or if the designee has died,
5 service ~~shall~~**MUST** be made ~~upon~~**ON** the owner or lessee named in the
6 notice of commencement. If service of the notice of furnishing is
7 made by mail, service is complete ~~upon~~**ON** mailing by first-class
8 mail with postage prepaid.

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

21 (4) ~~The~~**A** notice of furnishing, if not given on the form
22 attached to the notice of commencement, ~~shall~~**MUST** be in
23 substantially the following form:

24 NOTICE OF FURNISHING

25 To:
26 (name of designee (or owner or lessee) from notice of commencement)
27

1 (address from notice of commencement)
2 Please take notice that the undersigned is furnishing to
3

4 (name and address of other contracting party)
5 certain labor or material for ,
6 (describe type of work)
7 in connection with the improvements to the real property described
8 in the notice of commencement recorded in liber , on
9 page ,records,
10 (name of county)

11
12 or (a copy of which is attached ~~hereto~~ **TO THIS NOTICE**)

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

18
19 (name and address of lien claimant)
20 by
21 (name and capacity of party
22 signing for lien claimant)
23
24 (address of party signing)

25 Date:

26 (5) The failure of a lien claimant to provide a notice of
27 furnishing within the time specified in this section ~~shall~~ **DOES** not

1 defeat the lien claimant's right to a construction lien for work
2 performed or materials furnished by the lien claimant after the
3 service of the notice of furnishing.

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

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

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

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

1 (10) One or more laborers may authorize an agent to prepare
2 and serve a notice of furnishing in the manner provided in this
3 section. Notice of furnishing under this section may contain the
4 notice of furnishing of more than 1 laborer and ~~shall~~**MUST** contain
5 the information required ~~in subsection~~**BY SUBSECTION** (4) as to
6 each laborer for whom it is prepared. ~~The~~**A COURT SHALL CONSIDER**
7 **THE** notice of furnishing of each lien claimant under this
8 subsection ~~shall be considered by the court~~ on its own merits.

9 Sec. 112. (1) If a **NOTICE OF PROFESSIONAL SERVICES CONTRACT,**
10 **NOTICE OF PROFESSIONAL SERVICES SUBCONTRACT,** notice of
11 commencement, claim of lien, certificate of discharge of lien, or a
12 certificate of a county clerk that no proceedings to enforce a
13 ~~statement or claim of~~**CONSTRUCTION** lien have been commenced within
14 the period provided by law is recorded in the office of a register
15 of deeds, the register shall endorse ~~thereon~~**ON THE INSTRUMENT** the
16 date of its recording and ~~shall~~ properly index the instrument.

17 (2) The fee for recording an instrument described in
18 subsection (1) ~~shall be~~**IS** the same as the fee that is provided by
19 law for the recording of a real estate mortgage.

20 (3) The recording of a **NOTICE OF PROFESSIONAL SERVICES**
21 **CONTRACT, NOTICE OF PROFESSIONAL SERVICES SUBCONTRACT,** notice of
22 commencement, or a claim of lien ~~shall operate~~**OPERATES** as
23 constructive notice to subsequent purchasers or encumbrancers in
24 the same manner as the recording of a real estate mortgage.

25 Sec. 119. (1) Except as otherwise provided by subsection (4),
26 as between parties entitled to claim construction liens under this
27 act, ~~their claims of lien shall be treated as having~~**THE LIENS HAVE**

1 equal priority.

2 (2) A construction lien under this act ~~shall take~~ **HAS** priority
3 over all garnishments for the contract debt made after commencement
4 of the first actual physical improvement, **OR, IF THE CONSTRUCTION**
5 **LIEN IS A LIEN OF A DESIGN PROFESSIONAL THAT RECORDED A NOTICE**
6 **UNDER SECTION 107A OR 107B, AFTER THE NOTICE WAS RECORDED,** without
7 regard to the date of recording of the claim of lien.

8 (3) A construction lien arising under this act ~~shall take~~ **HAS**
9 priority over all other interests, liens, or encumbrances ~~which~~
10 **THAT** may attach to the building, structure, or improvement, or ~~upon~~
11 **ON** the real property on which the building, structure, or
12 improvement is erected, ~~when~~ **IF** the other interests, liens, or
13 encumbrances are recorded ~~subsequent to~~ **AFTER** the first actual
14 physical improvement, **OR, IF THE CONSTRUCTION LIEN IS A LIEN OF A**
15 **DESIGN PROFESSIONAL THAT RECORDED A NOTICE UNDER SECTION 107A OR**
16 **107B, AFTER THE NOTICE WAS RECORDED.**

17 (4) A mortgage, lien, encumbrance, or other interest recorded
18 before the first actual physical improvement to real property,
19 ~~shall have~~ **OR, IF THE CONSTRUCTION LIEN IS A LIEN OF A DESIGN**
20 **PROFESSIONAL THAT RECORDED A NOTICE UNDER SECTION 107A OR 107B,**
21 **BEFORE THE NOTICE WAS RECORDED, HAS** priority over a construction
22 lien arising under this act. The priority of the mortgage ~~shall~~
23 ~~exist~~ **EXISTS** as to all obligations secured by the mortgage except
24 for indebtedness arising out of advances made ~~subsequent to~~ **AFTER**
25 the first actual physical improvement, **OR, IF THE CONSTRUCTION LIEN**
26 **IS A LIEN OF A DESIGN PROFESSIONAL THAT RECORDED A NOTICE UNDER**
27 **SECTION 107A OR 107B, AFTER THE NOTICE WAS RECORDED.** An advance

1 made pursuant to the mortgage, but subsequent to the first actual
2 physical improvement, ~~shall have~~ **OR, IF THE CONSTRUCTION LIEN IS A**
3 **LIEN OF A DESIGN PROFESSIONAL THAT RECORDED A NOTICE UNDER SECTION**
4 **107A OR 107B, AFTER THE NOTICE WAS RECORDED, HAS** priority over a
5 construction lien if, for that advance, the mortgagee has received
6 a contractor's sworn statement as provided in section 110, has made
7 disbursements pursuant to the contractor's sworn statement, and has
8 received waivers of lien from the contractor and all
9 subcontractors, laborers, and suppliers who have provided notices
10 of furnishing. The construction lien of ~~any~~ **A** lien claimant not set
11 forth on the sworn statement ~~upon~~ **ON** which an advance was made
12 ~~shall be~~ **IS** subordinate to the lien of the mortgage, including the
13 advance, unless ~~prior to~~ **BEFORE** the advance the lien claimant ~~has~~
14 provided the designee with a notice of furnishing if required by
15 section 109 or ~~has~~ recorded a claim of lien. ~~Any~~ **AN** advance made
16 after a notice of furnishing has been provided or has been excused
17 as provided in sections 108, 108a, and 109 or **AFTER** a claim of lien
18 has been recorded ~~shall be~~ **IS** subordinate to the construction lien
19 of ~~that~~ **THE** lien claimant unless ~~prior to~~ **BEFORE** the advance the
20 mortgagee ~~has~~ received from ~~that~~ **THE** lien claimant either a full
21 unconditional waiver of lien or a partial unconditional waiver of
22 lien for the full amount due the lien claimant as of the date
23 through which the lien is waived as shown on the lien waiver and
24 the date through which the lien is waived as shown on the partial
25 unconditional waiver is within 30 days ~~prior to~~ **BEFORE** the advance.

26 (5) For purposes of this section, retainage ~~which~~ **THAT** is not
27 payable under a contract until ~~the happening of~~ a certain event

1 **HAPPENS** in addition to ~~the providing of an improvement~~ **BEING**
2 **PROVIDED**, is not due as of the date ~~of the providing of the~~
3 improvement **IS PROVIDED**.

4 Enacting section 1. Section 301 of the construction lien act,
5 1980 PA 497, MCL 570.1301, is repealed.