MICHIGAN MARINA AND BOATYARD STORAGE LIEN ACT

Act 362 of 1998

AN ACT to provide for certain liens on certain marine property repair, service, or storage in marinas, boatyards, and marine repair facilities; to provide for the sale of certain property subject to a lien; to provide for the liability of certain persons; to provide for powers and duties of certain state departments; and to provide for the enforcement of this act.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998

The People of the State of Michigan enact:

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570.371 Short title.

Sec. 1.

This act shall be known and may be cited as the "Michigan marina and boatyard storage lien act".

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998

570.372 Definitions.

Sec. 2.

As used in this act:

(a) "Boat" and "vessel" mean boat and vessel as those words are defined in sections 80101 and 80104 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80101 and 324.80104.

(b) "Default" means the failure to pay obligations incurred for labor, repairs, maintenance services, materials, supplies, or the storage of a boat, boat motor, boat cradle, or boat trailer.

(c) "Facility" means a marina, boatyard, boat or yacht club, or marine repair facility that provides, as part of its commercial operation, for the storage or repair of boats, boat motors, boat cradles, or boat trailers.

(d) "Fair market value" means the value of the property as determined by the current issue of a nationally recognized used vessel guide at the time of the notice to the property owner and any lienholder under section 5(5)(a).

(e) "Lienholder" or "lienholder of record" means a person to whom either of the following applies:

(i) The person has filed a lien notation on the title of a boat or boat trailer.

(ii) The person claims an interest in a boat motor or boat cradle under a financing statement or other marine documentation filed with the secretary of state or under another public filing, other than a filing with a register of deeds in this state.

(f) "Person" means an individual, association, partnership, limited liability company, corporation, boat or yacht club, governmental entity, or other legal entity.

(g) "Property" means a boat, boat motor, boat cradle, or boat trailer in storage at a facility for or following service, repair, or storage.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998 ;-- Am. 2016, Act 286, Eff. Dec. 26, 2016

570.373 Possessory lien on stored property.

Sec. 3.

(1) A facility owner has a possessory lien on property stored at that facility for storage, rent, labor, repairs, maintenance services, materials, supplies, and other charges and for expenses reasonably incurred in the sale of that property under this act. Except as provided in subsection (8), a lien on property under this section takes priority over any prior lien on the property unless the prior lienholder pays to the facility owner the amount of the lien attributable to storage, labor, materials, supplies, or other charges reasonably incurred in the sale of the property under this act or the following applicable amount, except as otherwise provided in this section, whichever is less:

(a) For a vessel that is not more than 27 feet long, $5,000.00 or 20% of the fair market value, whichever is less.

(b) For a vessel that is more than 27 feet but not more than 40 feet long, $30,000.00.

(c) For a vessel that is more than 40 feet but not more than 60 feet long, $75,000.00.

(d) For a vessel that is more than 60 feet long, $90,000.00.

(2) The amount calculated under subsection (1) must be increased by a like amount if the expenditure for labor and materials was for both primary power engines of a vessel equipped with 2 engines. However, this subsection does not apply to auxiliary propulsion or trolling engines.

(3) The amount calculated under subsection (1) must be reduced by 1/2 if more than half of the expenditure for labor and materials was attributable only to the repair or replacement of 1 of the following:

(a) Navigational electronics.

(b) Auxiliary power generators.

(4) The amount calculated under subsection (1) must be reduced by 3/4 if more than half of the expenditure for labor and materials was attributable only to 1 of the following:

(a) The repair or replacement of a cabin interior.

(b) Painting.

(c) Cosmetic work.

(d) Any combination of subdivisions (a) to (c).

(5) A payment made by a prior lienholder to a facility owner under this section must be added to the amount of the lien of the prior lienholder who made the payment and must be subtracted from the amount of the facility owner's lien.

(6) The facility owner's lien under this act is the only lien that a facility owner has on property, unless the facility owner is also the prior lienholder.

(7) This act does not create a lien on a documented vessel subject to a preferred ship mortgage or other preferred maritime lien under 46 USC 31301 to 31343. A facility owner is required to obtain an abstract of title from the United States Coast Guard for a vessel that is documented under 46 USC 12101 to 12152.

(8) The lien created for storage under this act without a written repair, service, or storage agreement that includes a notice of lien does not take priority over the lien of a prior lienholder for repairs, service, or storage incurred before 30 days after the notice of lien required by section 4(1)(b) is delivered to the prior lienholder. After that 30-day period, the lien includes all repair, service, or storage charges incurred, including, but not limited to, those incurred during the 30-day period.

(9) A prior lienholder shall arrange to remove the property from the facility on the termination of the facility's lien under this act unless the lienholder and the facility owner enter into a new storage agreement.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998 ;-- Am. 2016, Act 286, Eff. Dec. 26, 2016

570.374 Notice of lien.

Sec. 4.

(1) A facility owner shall notify a property owner and all prior lienholders of a lien created under this act before enforcing the lien. A property owner is notified if either of the following has occurred:

(a) The property owner has signed a written repair, service, or storage agreement that includes a notice of the lien created under this act.

(b) The facility owner has mailed written notification of the lien created under this act to the property owner and all prior lienholders or has otherwise satisfied the requirements of section 5(5)(a).

(2) A facility owner who does not have a written storage or service agreement that includes a notice of a lien created under this act on property originally left at the facility only for repairs, labor, maintenance services, or materials installation on a repair order shall not do either of the following:

(a) File a lien for service or storage fees on the property before 30 days after the notice of intent to commence

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service or storage fees was filed with the prior lienholder.

(b) Initiate an enforcement of lien action under section 5 until 30 days after the written notice of a lien required by subsection (1)(b) is delivered to the property owner and all prior lienholders.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998 ;-- Am. 2016, Act 286, Eff. Dec. 26, 2016

570.375 Enforcement of lien.

Sec. 5.

(1) A facility owner shall enforce a lien created under this act only if the facility owner has notified the property owner and all prior lienholders of the lien as required by section 4.

(2) If a property owner is in default for a period of more than 180 days, the facility owner may enforce the lien by selling the repaired or stored property at a commercially reasonable public sale. As used in this section, "commercially reasonable" means that term as defined in the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.9994. The proceeds of the sale under this section must be applied in the following order:

(a) To the reasonable expenses of the sale incurred by the facility owner including, to the extent not prohibited by law, reasonable attorney fees and legal expenses.

(b) To satisfy the lien created under this act to the extent that it has priority over all other liens.

(c) To satisfy all other liens on the property held by all lienholders of record to be paid in the order of priority.

(d) To the extent that the proceeds of sale exceed the sum of the items described in subdivisions (a) to (c), the facility owner shall pay the surplus to the property owner.

(3) If, after satisfying the reasonable expenses of the sale and the lien under subsection (2), there is a dispute concerning the priority of record lienholders under subsection (2), the facility owner may hold the proceeds of the sale until the dispute is settled by the written agreement of the parties or until an order or final judgment is issued by a court of competent jurisdiction relative to the dispute. The facility owner may pay the proceeds of sale to a court with subject matter jurisdiction. After a facility owner pays the proceeds to a court as described in this subsection, the facility owner is relieved of all further obligation concerning the proceeds.

(4) If proceeds of the sale under this section are not sufficient to satisfy the property owner's outstanding obligations to the facility owner or any lienholder of record, the property owner remains liable to the facility owner or lienholder for the deficiency.

(5) Before conducting a sale under this section, and within a reasonable time after default has continued for more than 180 days, the facility owner shall do both of the following:

(a) Mail a notice of default to the property owner and the secretary of state by certified mail or by another commercially available delivery service that provides proof of delivery, and, if the property is registered in another state or with a federal agency, mail a notice by certified mail to the other state or federal agency responsible for registration or documentation of the property. If the property is a vessel or trailer, the secretary of state shall provide the facility owner with the name and address of the registered owner of the vessel or trailer and a list of all lienholders. If the owner of property cannot be determined because of the condition of identification numbers or because a check of the records of the secretary of state or, if applicable, an agency of another state or federal agency does not reveal ownership, the facility owner may send notice of default by certified mail or by another commercially available delivery service that provides proof of delivery to the person that delivered the property to the facility, if known, at the person's last known address and shall publish in the print or electronic version of a newspaper of general circulation a notice that contains a description of the property and the information required to be provided in a notice of default. The facility owner shall provide a copy of the notice of default to each lienholder of record provided by the secretary of state. The notice of default must include all of the following:

(i) A statement that the property is subject to a lien held by the facility owner.

(ii) A statement of the facility owner's claim indicating the charges due on the date of the notice, the amount of any additional charges that will become due before the date of sale, and the date the additional charges will become due.

(iii) A demand for payment of the charges due within a specified time not less than 30 days after the date the notice is delivered to the property owner and all lienholders of record.

(iv) A statement that the property will be sold if the claim is not paid within the time stated in the notice. The statement must include the time and location of the sale.

(v) The name, street address, and telephone number of the facility owner, or the facility owner's designated agent, whom the property owner may contact to respond to the notice.

(b) After the expiration of the 30-day period set forth in subdivision (a)(iii), publish an advertisement of the sale

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once a week for 2 consecutive weeks in the print or electronic version of a newspaper of general circulation in the area where the sale is to be held. The advertisement must include a general description of the property, the name of the property owner, and the time and location of the sale. The date of the sale must be not less than 15 days after the date the first advertisement of the sale is published.

(6) At any time before the sale of property under this act, any lienholder may cure the default by paying the amount of the claim to the facility owner, which amount must be added to the lien of the lienholder.

(7) A sale under this act must be held at the facility or at another reasonable location.

(8) A person who purchases property sold at a commercially reasonable sale under this act takes the property free and clear of the rights of the property owner and all lienholders of record.

(9) A facility owner who complies with this act is liable as follows:

(a) The facility owner's liability to a lienholder of record is limited to the net proceeds received from the sale of the property.

(b) The facility owner's liability to the property owner is limited to the net proceeds received from the sale of the property after payment in full of all lienholders of record.

(10) A property owner or lienholder who suffers damages because of a facility owner's failure to comply with this act may bring an action in a court of competent jurisdiction for his or her actual damages or $250.00, whichever is greater.

(11) A facility owner is limited to 1 lien under state law against a property for the storage, labor, repairs, maintenance services, materials, or supplies for the property. A facility owner who asserts a lien against a property under another statute or the common law shall not also assert a lien under this act for the same storage, labor, repairs, maintenance services, materials, or supplies, or other charges or expenses related to the property.

(12) A facility owner may deny a property owner who has been notified under subsection (5) access to the storage facility, except that the property owner is entitled to access to the facility during normal business hours for the purpose of satisfying the lien or viewing and verifying the condition of the property.

(13) Except as otherwise provided in this act, all notices required by this act must be mailed by registered or certified mail, return receipt requested. Notices to a facility owner must be mailed to the owner's business address or to the address of the owner's designated representative. Notices to a property owner must be mailed to the property owner's last known address as listed on the title, registration, or other marine documentation or as provided in the most recent agreement concerning storage, labor, repairs, maintenance services, materials, or supplies entered into between the facility owner and the property owner. Notices to a lienholder of record must be sent to the address of the lienholder as provided by the secretary of state under subsection (5). Notices are considered delivered on the date the recipient of the notice signs the return receipt or, if the notice is undeliverable, the date the post office last attempts to deliver the notice.

(14) The facility owner may bid all or a portion of his or her claim at the auction sale of the property.

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History: 1998, Act 362, Imd. Eff. Oct. 20, 1998 ;-- Am. 2016, Act 286, Eff. Dec. 26, 2016

570.376 New title or registration; issuance by secretary of state.

Sec. 6.

The secretary of state shall issue a new title or registration to the purchaser of a vessel or trailer at a sale conducted under section 5. If the vessel or trailer was registered in another state, the secretary of state shall notify the other state that a new title or registration has been issued.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998 ;-- Am. 2016, Act 286, Eff. Dec. 26, 2016

570.377 Sale of documented vessel; satisfaction of requirements.

Sec. 7.

If a documented vessel is sold pursuant to this act, the facility owner shall satisfy the United States coast guard requirements for passage of title by operation of state law under 46 C.F.R. 67.91 that include providing all of the

following:

(a) A copy of this act.

(b) An affidavit from the facility owner setting forth the grounds for selling the property and the steps taken to comply with this act.

(c) Evidence of substantial compliance with this act.

(d) A bill of sale in recordable form from the facility owner as agent for the property owner.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998

570.378 Termination of lien.

Sec. 8.

A lien under this act shall terminate and a facility owner shall immediately cease enforcement of actions brought under this act if either of the following occurs:

(a) The property owner pays the facility owner the full amount necessary to satisfy the lien or other amount that is accepted by a facility owner as payment in full. At any time before the conclusion of a sale conducted under this act, the property owner may redeem the property by paying the full amount necessary to satisfy the lien or other amount that is accepted by a facility owner as payment in full.

(b) A person other than the facility owner who has a lien on the property pays the facility owner the full amount necessary to satisfy the facility owner's lien or other amount that is accepted by a facility owner as payment in full. Upon payment by a lienholder of record, the facility owner shall hold the property for the benefit of and at the direction of that lienholder and shall not deliver possession of the property to the property owner. Unless the facility owner and the lienholder enter into a new storage agreement, the lienholder shall arrange removal of the property from the facility.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998

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570.379 Inconsistent act provisions.

Sec. 9.

If a provision of this act is inconsistent with a provision of 1915 PA 312, MCL 570.301 to 570.309, then the provision of this act shall govern.

History: 1998, Act 362, Imd. Eff. Oct. 20, 1998