

CONSTRUCTION LIEN ACT (EXCERPT)
Act 497 of 1980

570.1203 Claim of construction lien; attachment to residential structure; filing of affidavit if no written contract; presumption; recovery from fund; joining fund as defendant in foreclosure action; service of summons and complaint; intervention by department as party defendant; defense of fund by attorney general; payment from fund.

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

(a) Paid the contractor for the improvement to the residential structure according to the contract, indicating in the affidavit the amount of the payment. The owner or lessee shall attach to the affidavit copies of the contract, any change orders, and any evidence of the payment that the owner or lessee has, including, but not limited to, a canceled check or a credit card or other receipt.

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

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

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

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

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

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

(c) That the contractor or subcontractor has retained or used the proceeds or any part of the proceeds paid to the contractor or subcontractor without having paid the person claiming the construction lien.

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

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

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

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

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

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

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

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

(ii) Before beginning to supply material or equipment to the contractor or subcontractor without obtaining advance payment in full, did either of the following, as applicable:

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

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

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

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

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

(i) That the contractor or subcontractor was, at the time of the application, or had been, within 2 years

before the application, insolvent.

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

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

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

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

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

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

(a) The contractor or subcontractor was delinquent in paying the supplier for material or equipment for more than the following number of days after the first business day of the month following the shipment of the material or equipment:

(i) In 2007, 180 days.

(ii) In 2008, 150 days.

(iii) In 2009, 120 days.

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

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

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

History: 1980, Act 497, Eff. Jan. 1, 1982;—Am. 1981, Act 191, Eff. Jan. 1, 1982;—Am. 1982, Act 17, Eff. Mar. 1, 1982;—Am. 2006, Act 572, Imd. Eff. Jan. 3, 2007.

Compiler's note: For transfer of powers and duties of certain occupational functions, boards, and commissions from the Department of Licensing and Regulation to the Department of Commerce, see E.R.O. No. 1991-9, compiled at MCL 338.3501 of the Michigan Compiled Laws.