

MICHIGAN MARINA AND BOATYARD STORAGE LIEN ACT (EXCERPT)
Act 362 of 1998

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 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.

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