

**Client Handout -- Michigan Construction Lien Act:  
Summary and Checklists**

**Summary of the Act**

**Purpose of the Act**

The Michigan Construction Lien Act (CLA) specifies that those who provide improvements to real property (land) through the rendering of services, labor, or materials have a lien against the property to secure payment for the improvements as long as the requirements of the CLA are followed. This means that if a lien is properly placed on the property and the lien claimant is not paid for the improvement, the lien claimant may pursue a foreclosure action against the property, which, if successful, will result in a forced sale of the property and payment for the improvement from the proceeds of the sale. The construction lien remedy is in addition to the lien claimant's right to pursue a breach of contract claim against the party with whom it contracted to provide the improvement. To be eligible to place a lien on the property and pursue a lien foreclosure action, the lien claimant must follow the steps set forth in the CLA, which requires that certain forms be submitted in accordance with an established timetable.

**Forms and Timing Requirements**

The CLA specifies that the following forms be used in the process of perfecting and foreclosing on a construction lien. While it is not possible to cover all of the forms or notices that may be required, these are the forms most used by the lien claimant and are those minimally required by the CLA in the perfection of the lien claimant's lien rights:

*Notice of commencement.* This document is created by the owner or lessee of the property, provides a legal description of the property, and designates the person to whom various other forms must be submitted. *Timing:* This document is filed with the register of deeds office on commercial projects before the project is commenced, and a copy of the notice is to be posted on the site and provided on request to potential lien claimants.

*Notice of furnishing.* This form is created and submitted by a lien claimant who does not have a direct contract with the owner or lessee of the property for whom the improvement is being provided. This document specifies the type of work or materials being provided, the date on which labor or materials were first provided, and the name of the party with whom the lien claimant has contracted. This document is accompanied by a proof of service specifying the date the document was provided to the owner's or lessee's designee. *Timing:* This document must be served on the designee named in the notice of commencement within 20 days of the first provision of labor or materials or 20 days after the issuance of the notice of commencement, whichever is later. Laborers must file this notice after wages have remained unpaid for more than 30 days after they were due and for fringe benefits before the fifth day of the second month after the fringe benefits were due.

*Sworn statement.* This form is created and submitted by the lien claimant, identifies all those with whom the lien claimant has subcontracted to provide labor or services, and gives certain financial information about each subcontract such as the total contract amount, the amount paid to date, and the balance owing. *Timing:* This form is generally submitted with each request for payment or when the owner or lessee of the property requests it.

*Partial conditional waiver.* This form is created and submitted by the lien claimant, waives the lien claimant's lien rights for the amount of the payment sought and all previous amounts paid, and is conditioned on the receipt of payment. *Timing:* This form is generally submitted with the payment request and for the amount sought.

*Partial unconditional waiver.* This form is created and submitted by the lien claimant and unconditionally waives the lien claimant's lien right to the amount stated in the waiver, generally the amounts already received. *Timing:* This form is submitted after receipt of the amount of the waiver.

*Final conditional waiver.* This form is created and submitted by the lien claimant and waives all of the claimant's lien rights on the project conditioned on the receipt of the payment applied for. *Timing:* This form is submitted with the final request for payment.

*Final unconditional waiver.* This form is created and submitted by the lien claimant and unconditionally waives all of the claimant's lien rights on the project. *Timing:* This form is submitted after final payment has been received.

*Claim of lien.* This form is created by the lien claimant and is the document that, when timely filed with the register of deeds office in the county where the project is located, places the lien on the property. The lien amount is calculated by subtracting the amount received from the contract balance (adjusted for changes and extras). This document is accompanied by a proof of service that establishes that a copy of the lien was served on the owner's designee. *Timing:* This form must be filed with the appropriate register of deeds no later than 90 days after the date of the claimant's last provision of labor or materials for the improvement. A lien filed after the 90-day limit is invalid. A copy of the lien must be served on the owner's designee within 15 days after filing with the register of deeds.

*Notice of lis pendens.* This document is filed in the register of deeds office in the county where the project is located indicating that a foreclosure action has been commenced on the lien. *Timing:* This form is filed when the lien foreclosure suit is commenced.

*Lien bond.* This document is filed by a surety (typically an insurance carrier) on behalf of the property owner with the circuit court clerk in the county where the project is located. The result of filing a lien bond is a discharge or removal of the lien. Although a lien foreclosure action is still possible, it will proceed against the bond as opposed to the property. *Timing:* This document may be filed at any time after the lien is filed against the property.

*Foreclosure complaint.* While not a prescribed form in the statute, the complaint is the first step in a foreclosure suit to enforce the lien and is filed with the circuit court in the county where the property is located. The complaint often also states a claim for breach of contract against the party with whom the lien claimant has its contract. *Timing:* The lien foreclosure suit must be filed no later than one year after the filing of the lien. Failure to file for foreclosure within the one-year limitations period results in the loss of the lien.

*Discharge of lien.* This document is signed by the lien claimant and, when filed with the register of deeds office in the county where the property is located, results in the removal or discharge of the lien. *Timing:* This document must be executed by the lien claimant on payment of the amount of the lien. When the lien is discharged after the filing of a foreclosure suit, the lien claimant must also execute a discharge of lis pendens.

### **Lien Law Checklists**

#### **Commercial Lien Claimants**

The following is a checklist that may be used in ensuring that the lien claimant's lien rights are protected during the project and up to and after the point when a lien must be filed:

<i>Action</i>	<i>When</i>	<i>Done</i>
Request a notice of commencement	On signing the contract	_____
Mail a notice of furnishing (for sub-contractors and by certified suppliers) mail to the owner's designee	On signing the contract but no later than 20 days after first providing labor or materials	_____
Complete a proof of service of mailing the notice of furnishing and retain a copy in the lien file	On mailing the notice of furnishing	_____
Prepare and provide sworn statements (retain copies for the file and ensure that all numbers stated in the form are completely accurate)	With each payment application	_____
Provide partial conditional waivers	With payment applications and before the payment sought is received	_____
Provide partial unconditional waivers	After the amount stated in the waiver is received	_____

Provide a final conditional waiver	With the final payment request	_____
Provide a final unconditional waiver	Only after final payment is received	_____
<i>Action</i>	<i>When</i>	<i>Done</i>
File a claim of lien	Must be filed in the register of deeds office within 90 days after the claimant's last provision of labor or materials; the legal description of the property must be included, so be sure to obtain a first-generation copy of the original property description in the notice of commencement	_____
Serve a copy of the claim of lien on the owner's designee by certified mail and prepare and retain a copy of the proof of service in the lien file	Must be mailed within 15 days after filing the claim of lien	_____
File a lien foreclosure suit	Must be filed within one year after the claim of lien is filed	_____
Obtain a title search	Complete before filing a foreclosure suit because all parties with an interest in the property must be named in the suit (request the search at least two weeks before the suit is filed)	_____
File a notice of lis pendens	Immediately after filing a foreclosure suit	_____
Complete a discharge of lien	After payment of the lien amount	_____

**Commercial Owners**

The following checklist should be used by the owner or lessee in processing payments throughout the life of the project to ensure that liens are avoided or minimized. While other steps will be required, these are the primary actions that will be necessary on most commercial projects:

<i>Action</i>	<i>When</i>	<i>Done</i>
File a notice of	Before the first physical	_____

commencement and post a copy at the site (it is generally best to provide copies to every contractor who has a direct contract with the owner or lessee)	improvement to the property	
Require in each direct contract that any liens the contractor's subcontractors file be removed from the property (by bond or payment)	With each direct contract	_____
Require that each contractor who has a direct contract with the owner or lessee supply sworn statements	With each payment application	_____
Compare the sworn statements with the notices of furnishing received and determine the reasons for any discrepancies	With each payment application	_____
Require partial unconditional waivers of lien and ensure that the waiver amounts match the amounts that have been paid	With each payment application	_____
Obtain a title search	Before each loan draw or advance of funds for the project	_____
Obtain lien bonds	If a lien is filed, require that the direct contractor remove the lien by posting a lien bond to maintain clear title	_____
Pay only the amounts shown on the sworn statements and only after confirming that those amounts match the amounts shown on the partial conditional waivers	With each payment	_____

Require final unconditional waivers                      When final payment is made                      \_\_\_\_\_

**Residential Lien Claimants**

While the forms are generally the same as in commercial construction, contractors and suppliers working in the residential construction field use the forms in a slightly different manner. The following checklist identifies the differences between commercial and residential practices:

<i>Action</i>	<i>When</i>	<i>Done</i>
Determine whether the project is residential (Will the owner reside in the home or one unit of the duplex, or is the building an appurtenance to a single family home or duplex?)	Before undertaking the project	_____
Ensure that the fees to the licensing fund have been paid to qualify the lien claimant for recovery from the Homeowner Construction Lien Recovery Fund	Before undertaking the project	_____
Ensure that the contracts are in writing and that they specify the contractor's license number if one is required	Before undertaking the project	_____
Request a notice of commencement (The owner is not required to provide one at the commencement of a project, but the form must be provided if the lien claimant requests.)	Before filing a lien	_____
Mail a notice of furnishing (for subcontractors and suppliers) by certified mail to the owner's	On signing a contract but no later than 20 days after first providing labor or materials	_____

designee

Complete a proof of service for the notice of furnishing and retain it in the lien file	On mailing the notice of furnishing	_____
Prepare and provide sworn statements (retain copies for the file and ensure that all numbers stated in the form are completely accurate)	With each payment application	_____
Provide partial conditional waivers	With payment applications and before the payment sought is received	_____
Provide partial unconditional waivers	After the amount stated in the waiver is received	_____
Provide a final conditional waiver	With the final payment request	_____
Provide a final unconditional waiver	Only after final payment is received	_____
File a claim of lien	Must be filed in the register of deeds office within 90 days after the last provision of labor or materials; the legal description of the property must be included, so be sure to obtain a first-generation copy of the original property description in the notice of commencement	_____
Serve a copy of the claim of lien on the owner's designee by certified mail and prepare and retain a copy of the proof of service in the lien file	Must be mailed within 15 days after filing the claim of lien	_____
If the owner has fully paid the general contractor, the lien claimant should file a claim with the	On verification that the owner has fully paid the general contractor	_____

Homeowner Construction  
Lien Recovery Fund

File a lien foreclosure suit (if this includes a claim against the Homeowner Construction Lien Recovery Fund, the fund must be made a party to the suit)	Must be filed within one year after the claim of lien is filed	_____
Obtain a title search	Complete before filing a foreclosure suit since all parties with an interest in the property must be named in the suit (request at least two weeks before the suit is filed)	_____
File a notice of lis pendens	Immediately after filing a foreclosure suit	_____
Complete a discharge of lien	After payment of the lien amount	_____