

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 465

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

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

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

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

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

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

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

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

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

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

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

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

1 (5) ~~(4)~~—"Subcontractor" means a person, other than a laborer
2 or supplier, who pursuant to a contract between himself or herself
3 and a person other than the owner or lessee performs any part of a
4 contractor's contract for an improvement.

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

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

15 **SEC. 107A. (1) A DESIGN PROFESSIONAL WHO ENTERS INTO A WRITTEN
16 CONTRACT WITH AN OWNER, OR WITH A PERSON ACTING AS AN AGENT OF THE
17 OWNER, TO PROVIDE PROFESSIONAL SERVICES RELATING TO THE PROPOSED OR
18 ACTUAL ERECTION, ALTERATION, REPAIR, OR REMOVAL OF A STRUCTURE ON
19 OR OTHER IMPROVEMENT TO REAL PROPERTY MAY RECORD A NOTICE WITH THE
20 REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED.
21 THE NOTICE MUST BE IN 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 RECORD 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 RECORD 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 (3) A NOTICE UNDER THIS SECTION IS VALID FOR 1 YEAR AFTER THE
16 DATE IT IS RECORDED. THE DESIGN PROFESSIONAL MAY RECORD A
17 SUBSEQUENT NOTICE WITH RESPECT TO THE WRITTEN CONTRACT. ALL OF THE
18 REQUIREMENTS OF THIS SECTION, INCLUDING THE TIME LIMITATION OF
19 SUBSECTION (2), APPLY TO A SUBSEQUENT NOTICE.

20 (4) IF AN ACTUAL PHYSICAL IMPROVEMENT IS MADE TO THE PROPERTY
21 AFTER A NOTICE IS RECORDED UNDER THIS SECTION, THE NOTICE IS ONLY
22 EFFECTIVE FROM THE DATE OF THE FIRST ACTUAL PHYSICAL IMPROVEMENT.

23 (5) THIS SECTION, OR THE RECORDING OF A NOTICE UNDER THIS
24 SECTION, DOES NOT AFFECT THE REQUIREMENTS OF THIS ACT REGARDING THE
25 CREATION OF A CONSTRUCTION LIEN, INCLUDING REQUIREMENTS OF SECTION
26 107, THE STEPS NECESSARY TO CLAIM A LIEN, OR THE MANNER OF
27 ENFORCING A LIEN.

1 SEC. 107B. (1) A PERSON THAT FURNISHES PROFESSIONAL SERVICES
2 UNDER A WRITTEN SUBCONTRACT WITH A DESIGN PROFESSIONAL WHO HAS
3 RECORDED A NOTICE UNDER SECTION 107A, AND WHOSE ENGAGEMENT HAS BEEN
4 APPROVED IN WRITING BY OR ON BEHALF OF THE OWNER OF THE PROPERTY,
5 MAY RECORD WITH THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE
6 PROPERTY IS LOCATED A NOTICE OF THE SUBCONTRACT IN SUBSTANTIALLY
7 THE FOLLOWING FORM:

8 NOTICE OF PROFESSIONAL SERVICES SUBCONTRACT

9 UNDER A WRITTEN SUBCONTRACT DATED _____

10 BETWEEN _____, DESIGN PROFESSIONAL,

11 AND _____, AS SUB-DESIGN PROFESSIONAL,

12 _____ IS TO FURNISH OR HAS FURNISHED

13 PROFESSIONAL SERVICES RELATING TO THE PROPOSED OR ACTUAL

14 ERECTION, ALTERATION, REPAIR, OR REMOVAL OF A STRUCTURE ON OR

15 OTHER IMPROVEMENT TO REAL PROPERTY DESCRIBED AS FOLLOWS, WHICH

16 SERVICES ARE A PORTION OF THE SERVICES FURNISHED OR TO BE

17 FURNISHED BY THE DESIGN PROFESSIONAL UNDER A WRITTEN ORIGINAL

18 CONTRACT WITH _____, THE OWNER:

19 INSERT DESCRIPTION OF SERVICES RENDERED

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

21 INSERT LEGAL DESCRIPTION

22 AT THE TIME OF THIS NOTICE, AN ACCOUNT OF THE SUBCONTRACT IS AS

23 FOLLOWS:

24 1. ESTIMATED OR AGREED CONTRACT PRICE: _____

25 2. APPROVED EXTRA OR ADDITIONAL SERVICES: _____

26 3. PAYMENTS RECEIVED: _____

27 THE REGULAR MAILING ADDRESS OF THE SUBCONTRACTING PARTY

1 RECORDING THIS NOTICE IS AS FOLLOWS:

2 INSERT ADDRESS

3 (2) A PERSON ENTITLED TO RECORD A NOTICE OF CONTRACT UNDER
4 SUBSECTION (1) MAY RECORD THE NOTICE AT ANY TIME AFTER THE
5 EXECUTION OF THE WRITTEN SUBCONTRACT REGARDLESS OF WHETHER THE
6 PROFESSIONAL SERVICES UNDER THE WRITTEN SUBCONTRACT HAVE BEEN
7 COMMENCED OR COMPLETED, AND REGARDLESS OF WHETHER THE CONSTRUCTION,
8 ALTERATION, REPAIR, OR REMOVAL OF THE STRUCTURE OR THE OTHER
9 IMPROVEMENT TO WHICH THE PROFESSIONAL SERVICES RELATE HAS BEEN, OR
10 IS EVER, COMMENCED OR COMPLETED. HOWEVER, THE PERSON SHALL NOT
11 RECORD THE NOTICE LATER THAN 90 DAYS AFTER THE LAST DAY A DESIGN
12 PROFESSIONAL WHO IS ENTITLED TO RECORD A NOTICE UNDER THIS SECTION
13 OR SECTION 107A, OR ANY PERSON CLAIMING BY, THROUGH, OR UNDER THE
14 DESIGN PROFESSIONAL, PERFORMED PROFESSIONAL SERVICES FOR THE
15 PROJECT.

16 (3) A NOTICE UNDER THIS SECTION IS VALID FOR 1 YEAR AFTER THE
17 DATE IT IS RECORDED. THE PERSON FURNISHING PROFESSIONAL SERVICES
18 UNDER THE WRITTEN CONTRACT WITH A DESIGN PROFESSIONAL MAY RECORD A
19 SUBSEQUENT NOTICE WITH RESPECT TO THE WRITTEN CONTRACT. ALL OF THE
20 REQUIREMENTS OF THIS SECTION, INCLUDING THE TIME LIMITATION OF
21 SUBSECTION (2), APPLY TO A SUBSEQUENT NOTICE.

22 (4) IF AN ACTUAL PHYSICAL IMPROVEMENT IS MADE TO THE PROPERTY
23 AFTER A NOTICE IS RECORDED UNDER THIS SECTION, THE NOTICE IS ONLY
24 EFFECTIVE FROM THE DATE OF THE FIRST ACTUAL PHYSICAL IMPROVEMENT.

25 (5) THIS SECTION, OR THE RECORDING OF A NOTICE UNDER THIS
26 SECTION, DOES NOT AFFECT THE REQUIREMENTS OF THIS ACT REGARDING THE
27 CREATION OF A CONSTRUCTION LIEN, INCLUDING REQUIREMENTS OF SECTION

1 107, THE STEPS NECESSARY TO CLAIM A LIEN, OR THE MANNER OF
2 ENFORCING A LIEN.

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

15 (2) ~~The~~ **A** notice of commencement shall ~~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 (f) The following statement:

4 "To lien claimants and subsequent purchasers:

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

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

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

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

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

24 (3) ~~Each~~ **A** copy of the ~~A~~ notice of commencement ~~shall~~ **REQUIRED**
25 **UNDER THIS SECTION MUST** have a blank notice of furnishing as
26 described in section 109 attached to it. The blank notice of
27 furnishing ~~shall~~ **MUST** be easily detachable from the copy of the

1 notice and need not be recorded.

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

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

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

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

1 subcontractor, supplier, or laborer. ~~requesting a copy of the~~
2 ~~notice of commencement.~~

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

8 (9) ~~The~~**AN** owner, lessee, or designee **REQUIRED TO RECORD A**
9 **NOTICE OF COMMENCEMENT UNDER THIS SECTION** shall provide a copy of
10 the notice of commencement to the general contractor, if any.
11 ~~Failure of the~~**AN** owner, lessee, or designee **THAT FAILS** to provide
12 the notice of commencement to the general contractor ~~shall render~~
13 ~~the owner or lessee~~ **IS** liable to the general contractor for all
14 actual expenses sustained by the general contractor in obtaining
15 the information otherwise provided by the notice of commencement.

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

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

1 furnished to the subcontractor or supplier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 contract vendee or lessee.

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

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

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

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

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

7 provide substantially all the improvements to the property.)

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

9 the form:

10

WARNING TO HOMEOWNER

11

Michigan law requires that you do the following:

12

1. Complete and return this form to the person who asked for

13

it within 10 days after the date of the postmark on the request.

14

2. If you do not complete and return this form within the 10

15

days you may have to pay the expenses incurred in getting the

16

information.

17

3. If you do not live at the site of the improvement, you must

18

post a copy of this form in a conspicuous place at that site.

19

You are not required to but should do the following:

20

1. Complete and post a copy of this form at the place where

21

the improvement is being made, even if you live there.

22

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

23

(g) The following statement:

24

"To lien claimants and subsequent purchasers:

25

Take notice that work is about to commence on an improvement

26

to the real property described in this instrument. A person ~~having~~

27

THAT HAS a construction lien may preserve the lien by providing a

1 notice of furnishing to the ~~above named~~ designee **NAMED ABOVE** and
 2 the general contractor, if any, and by timely recording a claim of
 3 lien, in accordance with law.

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

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

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

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

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

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

26 (5) ~~The~~ **AN** owner, lessee, or designee **REQUIRED TO PROVIDE A**
 27 **NOTICE OF COMMENCEMENT UNDER THIS SECTION**, within 10 days after the

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

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

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

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

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

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

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

1 section 109 expires, whichever is later.

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

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

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

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

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

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

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

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

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

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

25 NOTICE OF FURNISHING

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

1

2 (address from notice of commencement)

3 Please take notice that the undersigned is furnishing to

4

5 (name and address of other contracting party)

6 certain labor or material for,

7 (describe type of work)

8 in connection with the improvements to the real property described

9 in the notice of commencement recorded in liber, on

10 page,records,

11 (name of county)

12

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

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

19

20 (name and address of lien claimant)

21 by

22 (name and capacity of party

23 signing for lien claimant)

24

25 (address of party signing)

26 Date:

27 (5) The failure of a lien claimant to provide a notice of

1 furnishing within the time specified in this section ~~shall~~**DOES** not
2 defeat the lien claimant's right to a construction lien for work
3 performed or materials furnished by the lien claimant after the
4 service of the notice of furnishing.

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

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

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

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

1 the failure.

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

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

18 (2) The fee for recording an instrument described in
 19 subsection (1) ~~shall be~~**IS** the same as the fee ~~that is provided by~~
 20 ~~law for the recording of~~ a real estate mortgage **UNDER SECTION 2567**
 21 **OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.2567.**

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

27 Sec. 119. (1) Except as otherwise provided by subsection (4),

1 as between parties entitled to claim construction liens under this
2 act, ~~their claims of lien shall be treated as having~~ **THE LIENS HAVE**
3 equal priority. **THIS SUBSECTION APPLIES AND THE CONSTRUCTION LIENS**
4 **HAVE EQUAL PRIORITY REGARDLESS OF WHETHER THE LIEN ARISES AT THE**
5 **TIME OF THE FIRST ACTUAL PHYSICAL IMPROVEMENT OR AT THE TIME A**
6 **NOTICE IS RECORDED UNDER SECTION 107A OR 107B.**

7 (2) A construction lien under this act ~~shall take~~ **HAS** priority
8 over all garnishments for the contract debt made after ~~commencement~~
9 ~~of the first actual physical improvement,~~ **THE LIEN ARISES**, without
10 regard to the date of recording of the claim of lien.

11 (3) A construction lien arising under this act ~~shall take~~ **HAS**
12 priority over all other interests, liens, or encumbrances ~~which~~
13 **THAT** may attach to the building, structure, or improvement, or ~~upon~~
14 **ON** the real property on which the building, structure, or
15 improvement is erected, ~~when~~ **IF** the other interests, liens, or
16 encumbrances are recorded ~~subsequent to the first actual physical~~
17 ~~improvement.~~ **AFTER THE CONSTRUCTION LIEN ARISES.**

18 (4) A mortgage, lien, encumbrance, or other interest recorded
19 before the ~~first actual physical improvement to real property shall~~
20 ~~have~~ **CONSTRUCTION LIEN ARISES HAS** priority over a construction lien
21 arising under this act. The priority of the mortgage ~~shall exist~~
22 **EXISTS** as to all obligations secured by the mortgage except for
23 indebtedness arising out of advances made ~~subsequent to the first~~
24 ~~actual physical improvement.~~ **AFTER THE CONSTRUCTION LIEN ARISES.** An
25 advance made pursuant to the mortgage, but ~~subsequent to the first~~
26 ~~actual physical improvement shall have~~ **AFTER THE CONSTRUCTION LIEN**
27 **ARISES, HAS** priority over a construction lien if, for that advance,

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

22 (5) For purposes of this section, retainage ~~which~~**THAT** is not
 23 payable under a contract until ~~the happening of~~ a certain event
 24 **HAPPENS** in addition to ~~the providing of~~ an improvement **BEING**
 25 **PROVIDED**, is not due as of the date ~~of the providing of~~ the
 26 improvement **IS PROVIDED**.

27 (6) **FOR PURPOSES OF DETERMINING PRIORITIES UNDER THIS SECTION,**

1 A CONSTRUCTION LIEN ARISES AS FOLLOWS:

2 (A) EXCEPT AS PROVIDED IN SUBDIVISION (B), AT THE TIME OF THE
3 FIRST ACTUAL PHYSICAL IMPROVEMENT.

4 (B) AS TO A LIEN CLAIMED BY A PERSON AFTER THE PERSON HAS
5 RECORDED A NOTICE UNDER SECTION 107A OR 107B, AT THE TIME A NOTICE
6 IS RECORDED, SUBJECT TO ANY APPLICABLE LIMITATION UNDER SECTION
7 107A(4) OR 107B(4).

8 Enacting section 1. Section 301 of the construction lien act,
9 1980 PA 497, MCL 570.1301, is repealed.