

## **How To Make A Construction Lien Claim: Private Construction Projects**

Construction Liens are available only on private construction projects. If your contract involves a public works project, then refer to the appropriate “How to Make a Bond Claim” outline.

\*Practical Tip: We encourage you to create a separate lien folder for each project, and place in that folder the letters, notices and documents that you create and send, or that you receive. In that way, you can easily find and refer to these documents later if or when needed.

### **Event: Contract Formation**

#### **Action:**

- If you are a GENERAL CONTRACTOR: Obtain a recorded copy of Notice of Commencement and a blank Notice of Furnishing from the Project Owner at the time you sign the prime contract.
  - Place the Notice of Commencement and blank Notice of Furnishing form in the lien folder.
  - If the Owner does not provide you a copy at the time of signing the contract or in response to a verbal request, send a written request via certified mail to the Owner.
    - Upon receipt, attach the Certified Mail Return Receipt (Green Card) to the copy of written request in the lien folder.
- If you are a SUBCONTRACTOR or SUPPLIER: Submit a written request for the Notice of Commencement and a blank Notice of Furnishing to the General Contractor via certified mail.
  - Put a copy of the request and certified mail receipt (Green Card) into the lien folder.
  - Upon receipt of the Notice of Commencement and blank Notice of Furnishing, put these documents in the lien folder.

\*Practical Tip: A Notice of Commencement contains a legal description of the property being improved and identifies the person that the Owner has appointed to receive notices (the “Designee”). Refer to this document when preparing the notices and letters in the lien process described in this outline.

\*Practical Tip: If you are a GENERAL CONTRACTOR and you receive a written request from your Subcontractor, you have ten (10) days to provide the Subcontractor with a copy of the recorded Notice of Commencement and a blank Notice of Furnishing.

## **Event: First Furnishing**

**Action: Within twenty (20) days of the date of first furnishing:**

- If you are a SUBCONTRACTOR or SUPPLIER, prepare a Notice of Furnishing and send it via Certified Mail Return Receipt Requested to the Designee and General Contractor named in the Notice of Commencement.
  - Prepare a Proof of Service of Notice of Furnishing and place the original Proof of Service together with a copy of the Notice of Furnishing in the lien folder.
    - Practical Tip: We recommend that you also put a copy of your company’s first Daily Report or Load Ticket in the lien folder as proof of the first date of furnishing.
  - Attach the Certified Mail Return Receipt (Green Card) to the Proof of Service of Notice of Furnishing in the lien folder.

\*Practical Tip: If you are a GENERAL CONTRACTOR, you are not required to send a Notice of Furnishing because the Owner knows you are working on the Project by virtue of contracting and direct dealing with your company.

\*Practical Tip: If a SUBCONTRACTOR or SUPPLIER fails to serve the Notice of Furnishing within twenty (20) days of the date of first furnishing, it is not necessarily fatal to your Claim of Lien. Send the Notice of Furnishing, even if you miss the 20-day deadline. You will preserve your lien rights for work performed after you send the notice, and may have rights to a line for work performed before you sent the late notice.

## **Event: Last Furnishing**

### **Action: Within ninety (90) days of last furnishing work/materials:**

- Prepare a Claim of Lien, using the appropriate form provided in this outline as indicated below. NOTE: LEAVE A TWO-INCH (2") MARGIN AT THE TOP OF THE CLAIM OF LIEN. OTHERWISE THE CLERK WILL NOT ACCEPT THE FORM FOR FILING.
  - Determine the outstanding balance, including retainage; accrued interest, finance or time-price differential charges authorized by contract; undisputed extras; and unresolved claims asserted in good faith. Be certain to identify separately each outstanding cost item on the form.
- If you are the **GENERAL CONTRACTOR**, fill out the sample Claim of Lien form for General Contractors that indicates a Notice of Furnishing is not required from your company.
- If you are a **SUBCONTRACTOR or SUPPLIER**, fill out the sample Claim of Lien form for Subcontractors or Suppliers, and then attach a copy of the Notice of Furnishing and Proof of Service of Notice of Furnishing to the Claim of Lien.

\*Practical Tip: Insert the legal description from the Notice of Commencement in the space indicated on the Claim of Lien. However, if the legal description is too long, attach to the Claim of Lien a copy of the legal description from the Notice of Commencement, and insert "See Attached" on the form instead of the legal description.

- Record the Claim of Lien (and all of the attachments if you are a Subcontractor or Supplier) in the Office of the Register of Deeds in the county where the project is located.
- **Within fifteen days of recording the Claim of Lien**, serve the recorded Claim of Lien upon the Designee named in the Notice of Commencement via Certified Mail Return Receipt Requested.
  - Practical Tip: The second paragraph of the sample transmittal letter attached to this outline promises to send a copy of the recorded Claim of Lien to Designee upon receipt from County Register of Deeds' Office. When the clerk is not able to immediately provide you with a *recorded* copy (i.e., the clerk's stamped Liber and Page numbers on the form), use both paragraphs to send a copy of the unrecorded Claim of Lien. Once the clerk returns the stamped/recorded copy to you, send by

certified mail return receipt requested a copy of that recorded Claim of Lien to the Designee using only the first paragraph.

- Prepare a Proof of Service of Claim of Lien.
  - Put copies of the recorded Claim of Lien and Proof(s) of Service of Claim of Lien in the lien folder.

\*Practical Tip: We suggest that General Contractors, Subcontractors and Suppliers alike include a copy of your company's last daily report or trucking ticket in the lien folder as proof of the last day of furnishing.

### **Event: Non Payment**

**Action: Within one (1) year after the date of recording.**

- You have one (1) year after recording your Claim of Lien to file a lawsuit to foreclose your lien, and collect the unpaid contract balance.

**SAMPLE**

**LETTER REQUESTING NOTICE OF COMMENCEMENT**

[Owner and Address, or  
Contractor to whom you are supplying  
labor, material or services]

Re: <Identify project>

CERTIFIED MAIL

No. \_\_\_\_\_

RETURN RECEIPT REQUESTED

Dear \_\_\_\_\_:  
(Owner/Contractor)

This is to inform you that (your company name here) has been hired to provide services [or provide materials] on the above-referenced project. Please provide a copy of the Notice of Commencement for the project, and a blank form of a Notice of Furnishing within ten (10) days to allow us to provide the necessary notice required by law.

Thank you for your assistance.

Sincerely,

[Name and title of authorized signatory]

## NOTICE OF FURNISHING

TO: \_\_\_\_\_  
\_\_\_\_\_  
(Name & Address of Designee, or Owner or Lessee from Notice of Commencement).\*

Please take notice that the undersigned is furnishing to:

\_\_\_\_\_  
\_\_\_\_\_  
(name and address of other contracting party).

Certain labor or material for: \_\_\_\_\_  
(describe type of work)

in connection with the improvement of the real property described by the Notice of Commencement\*\*, a copy of which is attached or which is recorded in Liber \_\_\_\_, on Page \_\_\_\_ (name of County) Records, or a copy of the legal description of the real property subject to this lien is attached hereto.

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

\_\_\_\_\_  
(Name and address of Lien Claimant)

By: \_\_\_\_\_  
(Name and capacity of party signing  
for Lien Claimant)

Date: \_\_\_\_\_

Address of Party Signing:

\_\_\_\_\_  
\_\_\_\_\_

\*If no Designee is named in the Notice of Commencement, use Owner or Lessee named. If no Notice of Commencement is recorded or given, use name and address from County records.

\*\*If Liber and Page of recording are not available, a copy of the Notice of Commencement may be attached. If no Notice of Commencement is available or if legal description thereon is not correct, a correct legal description should be attached.

**SAMPLE**

**PROOF OF SERVICE OF NOTICE OF FURNISHING**

State of Michigan    )  
                                  ) SS  
County of \_\_\_\_\_)

\_\_\_\_\_, a person of suitable age and discretion, as the duly authorized agent for \_(your company name)\_ being first duly sworn in accordance with the law, deposes and says:

\*That on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_, he/she mailed a Notice of Furnishing (a true and exact copy of which is attached hereto) by U.S. certified mail and with the postage fully pre-paid thereon to the following person(s) with a certified number as indicated:

<u>Addressee and Address</u>	<u>Certified No.</u>	<u>Indicate whether Designee or Contractor</u>
_____	_____	_____

OR

\*\*That on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, he/she personally served a true copy of the Notice of Furnishing (a true and exact copy of which is attached hereto) upon the following person(s) by handing said true copy of said Notice of Furnishing to \_\_\_\_\_ personally.

<u>Addressee and Address</u>	<u>Indicate whether Designee or Contractor</u>
_____	_____

\_\_\_\_\_  
(Signature)

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
My Commission Expires: \_\_\_\_\_

\*use if service was by certified mail.  
\*\*use if service was made personally.

## **NOTICE OF FURNISHING COVER LETTER**

[Owner's Designee and  
address from Notice of  
Commencement]

No. \_\_\_\_\_  
RETURN RECEIPT REQUESTED

Dear \_\_\_\_\_:  
(Owner's Designee)

Thank you for your cooperation.

[Name and title of authorized signatory]

cc: [General Contractor]



**SAMPLE FOR GENERAL CONTRACTORS**  
**CLAIM OF LIEN**

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
(your company's name and address) \_\_\_\_\_ first provided labor or material for an improvement to the  
property described as:

<insert legal description from Notice of Commencement>

the [Owner] [Lessee] of which property is \_\_\_\_\_.  
(name of Owner or Lessee from Notice of Commencement)

This Claim of Lien is pursuant to Lien Claimants' contract with the Owner of the  
Property, and is exempt by statute from the Notice of Furnishing requirement.

The Lien Claimant's Contract amount, including extras, is \$\_\_\_\_\_.  
The Lien Claimant has received payment thereon in the total amount of \$\_\_\_\_\_,  
and therefore claims a Construction Lien upon the above-described real property in the  
amount of \$\_\_\_\_\_ inclusive of Time-Price Differential through today's date  
hereof plus a Time-Price Differential at \$\_\_\_\_ per diem from the date hereof until fully paid.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
[Signature of Lien Claimant,  
Agent or Attorney]

Signed on \_\_\_\_\_ [Date]

Subscribed and sworn to before me this _____ day of _____, 20____  _____, Notary Public _____, Michigan My Commission Expires: _____	Prepared by:  Name: _____ Address: _____ _____ _____
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**SAMPLE FOR SUBCONTRACTORS AND SUPPLIERS**  
**CLAIM OF LIEN**

Notice is hereby given that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
(your company's name and address) \_\_\_\_\_ first provided labor or material for an improvement to the  
property described as:

<insert legal description from Notice of Commencement>

the [Owner] [Lessee] of which property is \_\_\_\_\_.  
(name of Owner or Lessee from Notice of Commencement)

The Proof of Service of the Notice of Furnishing of same is attached hereto.

The last day of providing the labor or material was the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

The Lien Claimant's Contract amount, including extras, is \$\_\_\_\_\_.  
The Lien Claimant has received payment thereon in the total amount of \$\_\_\_\_\_,  
and therefore claims a Construction Lien upon the above-described real property in the  
amount of \$\_\_\_\_\_ inclusive of Time-Price Differential through today's date  
hereof plus a Time-Price Differential at \$\_\_\_\_\_ per diem from the date hereof until fully paid.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
[Signature of Lien Claimant,  
Agent or Attorney]

Signed on \_\_\_\_\_ [Date]

Subscribed and sworn to before me this _____ day of _____, 20____  _____, Notary Public _____, Michigan My Commission Expires: _____	Prepared by:  Name: _____ Address: _____ _____ _____
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State of Michigan )  
 ) SS  
County of \_\_\_\_\_)

ف U.S. certified mail and with the postage fully pre-paid thereon to the following person(s) with a certified number as indicated:

<u>Addressee and Address</u>	<u>Certified No.</u>	Indicate whether <u>Designee or Contractor</u>
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OR

ف by handing said true copy of said Claim of Lien to \_\_\_\_\_ personally.

<u>Addressee and Address</u>	<u>Indicate whether Designee or Contractor</u>
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(Signature)

Subscribed and sworn to before me this  
day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan  
My Commission Expires: \_\_\_\_\_

**SAMPLE**  
**SERVICE OF CLAIM OF LIEN COVER LETTER**

[Date]

[Owner's Designee and  
address from Notice of  
Commencement]

CERTIFIED MAIL  
No. \_\_\_\_\_  
RETURN RECEIPT REQUESTED

Re: Claim of Lien upon <Identify project>

Dear \_\_\_\_\_:  
(Owner's Designee)

Enclosed for service upon you as the Designee named in the Notice of Commencement for the above project, please find a copy of the Claim of Lien which was submitted to the \_\_\_\_\_ County Register of Deeds on \_\_\_\_\_, 20\_\_ for recording.

\*\*We are advised that, due to a backlog at the County records office, there may be a delay in transmittal of the recorded copy of the Claim of Lien. We will provide you with a copy of the recorded Claim of Lien, with the Liber and Page numbers, when we receive it from the County.

Sincerely,

enclosure

cc: <General Contractor (if applicable)>  
<Title Insurance Company, if known>  
<Company Attorney>

\*\*Use second paragraph if County Clerk does not immediately return a stamped/recorded copy of the Claim of Lien. Follow up with second transmittal when Clerk returns stamped/recorded copy to you, and use only the first paragraph.

## **Additional Forms Related to Construction Liens on Private Construction Projects**

### **Event: Payment Requests**

Whenever a contractor on a private project requests payment – either an interim progress payment or the final payment – the contractor must submit a Sworn Statement to the party with whom you contracted and which will be making the payment.

### **Event: Payment**

Whenever a contractor is going to receive payment – either an interim progress payment or the final payment – the party making the payment likely will request that you submit a waiver. There are two forms that are used for progress payments, and two other forms to be used for final payment.

#### **Progress Payment: Partial Waivers of Lien**

- If you are receiving payment before or simultaneously when you submit your waiver, use the Partial Unconditional Waiver of Lien.
- If you are submitting your waiver before you receive the payment, use the Partial Conditional Waiver of Lien.

\*Practical tip: An *unconditional* waiver is effective immediately upon delivery to the party making the payment. A *conditional* waiver, in contrast, is effective when you receive payment of the amount you indicate on the waiver. Only use the unconditional waiver if you have the money in hand, or will give the waiver to the party making the payment at the same time you receive your payment.

\*Practical tip: The Construction Lien Act prohibits “pre-work” waivers of lien. You should not be required, as part of any contract for the work, to waive your lien rights in advance of performing the work. A waiver obtained as part of a contract for the work is contrary to public policy and unenforceable, except to the extent that payment for labor and material furnished was actually made to you.

\*Practical tip: If the Owner gives you a promissory note or other

evidence of indebtedness to secure your work, it does not of itself serve to waive or to discharge otherwise valid construction lien rights.

\*Practical tip: Retainage which is not payable until some high percentage of the work is completed, or until the Owner accepts the work, is not “due” as of the date of the waiver, and is therefore not affected by the waiver. Make sure the wording of the waiver you sign is directed only to the particular amount you receive or are to receive if you are using a conditional waiver.

### **Final Payment: Full Waivers of Lien**

- If you are receiving final payment before or simultaneously when you submit your waiver, use the Full Unconditional Waiver of Lien.
- If you are submitting your waiver before you receive the final payment, use the Full Conditional Waiver of Lien.

\*Practical tip: See the comments above relating to Progress Payments about when to use a Conditional or Unconditional waiver. The same rules and suggestions apply to the Full Waivers of Lien.

\*Practical tip: If you give the party making the payment a waiver, and subsequently learn that the check is bad, immediately send the Owner a letter telling it that “the consideration for the waiver has failed” and that the waiver is therefore null and void.

### **EVENT: Payment after recording a Claim of Lien**

- If you have recorded a Claim of Lien, and you subsequently receive payment for that work, you will need to record a Discharge of Construction Lien to eliminate the “cloud” on the Owner’s title. We have provided a sample Discharge of Construction Lien for that purpose.

### **Additional Comments and Advice**

To assist you in further understanding the Construction Lien Process, we have provided you with a sample Notice of Commencement and Notice

of Commencement (Residential). When you send the form letter to the Owner or the party with whom you contracted requesting a copy of a Notice of Commencement, the Owner or that party with whom you contracted is required to mail to you a Notice of Commencement along with a blank Notice of Furnishing. Only the Owner fills out, records and posts this form. The Notice of Commencement will have all of the information necessary for you to fill in a Notice of Furnishing (i.e. Legal Description) and will instruct you to whom you should mail the completed Notice of Furnishing. Be certain to read the Notice of Commencement when you receive it and use it, because timely providing a Notice of Commencement is vital to protecting your rights to full payment for your work.

\*Practical Tip: An Owner of a residential structure is not required to prepare or to provide a Notice of Commencement *unless* he receives a written request from a contractor, subcontractor or supplier to do so. If you are working on a residential structure (an individual residential condominium unit or a residential building containing not more than two residential units, or the land on which it is or will be located), then send a letter to the Owner asking him to provide you with a Notice of Commencement. The form letter we provided to you can be utilized for that purpose.

### **Construction Lien Check List**

We encourage you to create a separate lien folder for each project, and place in that folder the letters, notices and documents that you create and send, or that you receive. In that way, you can easily find and refer to these documents later if or when needed. We have also provided you with a check list to place in the front of the folder to assist you in noting when the various documents should be sent out, and as a means of tracking whether or not the various steps have been completed.

**Sample**

## NOTICE OF COMMENCEMENT

State of Michigan )

) SS

County of \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn, deposes and says:  
(name of person)

To Lien Claimants and subsequent purchasers:

Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a Construction Lien may preserve the lien by providing a Notice of Furnishing to the below-named Designee and the General Contractor, if any, and by timely recording a Claim of Lien in accordance with law.

A person having a Construction Lien arising by virtue of work performed on this improvement should refer to the name of the Owner or Lessee and the legal description appearing in this Notice. A person subsequently acquiring an interest in the land described is not required to be named in a Claim of Lien.

A copy of this Notice with an attached form for Notice of Furnishing may be obtained upon making a written request by certified mail to the named Owner or Lessee; the Designee; or the person with whom you have contracted.

The legal description of the real property on which the improvement is to be made is:

(Insert legal description or type in "see attached" and attach description on separate sheet. Be sure description is posted on site along with this Notice).

The name, address and capacity of the Owner or Lessee of the real property contracting for the improvement is:

Name:

Address:

Capacity:

The name and address of the Fee Owner of the real property if the person contracting for the improvement is a Land Contract Vendee or Lessee, is:

Name:

Address:

The name and address of the Owner or Lessee's designee is:

Name:

Address:



The name and address of the General Contractor, if any, is:

Name:

Address:

\_\_\_\_\_  
(Signature) (Name and Capacity)

PREPARED BY:

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_, Notary Public

\_\_\_\_\_ County, \_\_\_\_\_

My commission Expires: \_\_\_\_\_

Sample

**NOTICE OF COMMENCEMENT (RESIDENTIAL)**

State of Michigan    )  
  ) SS  
County of \_\_\_\_\_)

**WARNING TO HOMEOWNER**

MICHIGAN LAW REQUIRES THAT YOU DO THE FOLLOWING:

1.       COMPLETE AND RETURN THIS FORM TO THE PERSON WHO ASKED FOR IT WITHIN TEN (10) DAYS AFTER THE DATE OF THE POSTMARK ON THE REQUEST.
2.       IF YOU DO NOT COMPLETE AND RETURN THIS FORM WITHIN TEN (10) DAYS, YOU MAY HAVE TO PAY THE EXPENSES INCURRED IN GETTING THE INFORMATION.
3.       IF YOU DO NOT LIVE AT THE SITE OF THE IMPROVEMENT, YOU MUST POST A COPY OF THIS FORM IN A CONSPICUOUS PLACE AT THAT SITE.

YOU ARE NOT REQUIRED TO, BUT SHOULD DO THE FOLLOWING:

1.       COMPLETE AND POST A COPY OF THIS FORM AT THE PLACE WHERE THE IMPROVEMENT IS BEING MADE, EVEN IF YOU LIVE THERE.
2.       MAKE AND KEEP A COPY OF THIS FORM FOR YOUR OWN RECORDS.

\_\_\_\_\_, being duly sworn, deposes and says:  
(name of person)

To Lien Claimants and subsequent purchasers:

Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a Construction Lien may preserve the lien by providing a Notice of Furnishing to the below-named Designee and the General Contractor, if any, and by timely recording a Claim of Lien in accordance with the law.

A person having a Construction Lien arising by virtue of work performed on this improvement should refer to the name of the Owner or Lessee and the legal description appearing in this Notice. A person subsequently acquiring an interest in the land described is not required to be named in a Claim of Lien.

A copy of this Notice with an attached form for Notice of Furnishing may be obtained upon making a

written request by certified mail to the named Owner or Lessee; the Designee; or the person with whom you have contracted.

The legal description of the real property on which the improvement to be made is:

The name, address and capacity of the Owner or Lessee of the real property contracting for the improvement is:

- a. Name:
- b. Address:
- c. Capacity:

The name and address of the Fee Owner of the real property if the person contracting for the improvement is a Land Contract Vendee or Lessee, is:

- a. Name:
- b. Address:
- c. Capacity:

The name and address of the Owner or Lessee's Designee is:

- a. Name:
- b. Address:
- c. Capacity:

The name and address of the General Contractor, if any, is:

- a. Name:
- b. Address:
- c. Capacity:

\_\_\_\_\_  
[Signature][name and capacity]

<p>Subscribed and sworn to before me this _____ day of _____, 20__</p> <p>_____, Notary Public</p> <p>_____, Michigan</p> <p>My Commission Expires: _____</p>	<p>Prepared by:</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>_____</p>
---	--

Sample

SWORN STATEMENT

State of Michigan    )  
                                  ) SS  
County of \_\_\_\_\_)

\_\_\_\_\_, being first sworn, says:

That, \_\_\_\_\_, is the [Contractor] [subcontractor] for an improvement to the following described real property situated in \_\_\_\_\_ County, Michigan, described as follows:

That the following is a statement of each subcontractor and supplier and laborer, for which laborer the payment of wages or fringe benefits and withholding is due but unpaid, with whom the \_\_\_\_\_ has contracted for performance under the Contract with the Owner or Lessee  
(your company's name)

thereof [or General Contractor; if applicable], and that the amounts due to the person as of the dates hereof are correctly and fully set forth opposite their names, as follows:

Name of subcontractor, supplier, or laborer	Type of improvement furnished	Total contract price	Amount already paid	Amount currently owing	Balance to complete (optional)	Amount of laborer wages due but unpaid	Amount of laborer fringe benefits and withholdings due but unpaid fringe
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That \_\_\_\_\_ the Contractor has not procured material from, or subcontracted  
(your company's name)

with, any person other than those set forth above and owes no money for the improvement other than the sums set forth above.

Deponent further says that he/she makes the foregoing statement as the [Contractor] [subcontractor] or as \_\_\_\_\_ of the [Contractor] [subcontractor] for the purposes of representing to the Owner or Lessee of the premises described above and his or her agents that the property described above is free from claims of construction liens, or the possibility of construction liens, except as specially set forth above and except for claims of construction liens by laborers which may be provided pursuant to Section 109 of the Construction Lien Act, Act No. 497 of the Public Acts of 1980, as amended, being Section 570.1109 of the Michigan Compiled Laws.

WARNING TO OWNER: AN OWNER OR LESSEE OF THE PROPERTY DESCRIBED ABOVE MAY NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF FURNISHING PURSUANT TO SECTION 109 OF THE CONSTRUCTION LIEN ACT TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

\_\_\_\_\_  
[Deponent name]

WARNING TO DEPONENT: A PERSON, WHO WITH THE INTENT TO DEFRAUD, GIVES A FALSE SWORN STATEMENT IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, ACT NO. 497 OF THE PUBLIC ACTS OF 1980, AS AMENDED, BEING SECTION 570.1110 OF THE MICHIGAN COMPILED LAWS.

Subscribed and sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, Michigan  
My Commission Expires: \_\_\_\_\_

**Sample**

**PARTIAL UNCONDITIONAL WAIVER OF LIEN**

I/we have a contract with \_\_\_\_\_ to provide \_\_\_\_\_  
(other contracting party)  
\_\_\_\_\_ for the improvement to the property  
general description of what was provided  
described as:

and hereby waive my/our Construction Lien to the amount of \$\_\_\_\_\_, for labor/materials  
provided through \_\_\_\_\_.  
date of draw cut-off or actual payment

This Waiver, together with all previous waivers, if any does/does not cover all amounts due to me/us for  
Contract improvement provided through the date shown above.

**STATEMENT**

1. Total Contract Price (as adjusted to date)    \$\_\_\_\_\_
2. Amount paid pursuant to previous Waivers                    \$\_\_\_\_\_
3. Amount paid pursuant to this Waiver                    \$\_\_\_\_\_
4. Amount remaining unpaid under Contract                    \$\_\_\_\_\_

\_\_\_\_\_  
[Signature of Lien Claimant]

Address:\_\_\_\_\_

\_\_\_\_\_  
Telephone No.\_\_\_\_\_

Signed on \_\_\_\_\_[Date]

DO NOT SIGN BLANK OR INCOMPLETE FORMS  
RETAIN A COPY

**Sample**

**PARTIAL CONDITIONAL WAIVER OF LIEN**

I/we have a Contract with \_\_\_\_\_ to provide \_\_\_\_\_  
(other contracting party)  
\_\_\_\_\_ for the improvement to the property situated in \_\_\_\_\_  
general description of what was provided

County, Michigan, described as follows: **[insert legal description of property or type in "see attached" and attach legal description from Notice of Commencement]**.

and hereby waive my/our Construction Lien to the amount of \$\_\_\_\_\_, for labor/materials provided through \_\_\_\_\_.  
date of draw cut-off or actual payment

This Waiver, together with all previous Waivers, if any, \_\_\_\_\_ cover all amounts  
does or does not  
due to me/us for Contract improvements provided through the date under this Partial Waiver of Lien.

**STATEMENT**

1. Total Contract Price (as adjusted to date) \$\_\_\_\_\_
2. Amount paid pursuant to previous Waivers \$\_\_\_\_\_
3. Amount paid pursuant to this Waiver \$\_\_\_\_\_
4. Amount remaining unpaid under Contract \$\_\_\_\_\_

\_\_\_\_\_  
[Signature of Lien Claimant]

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone No. \_\_\_\_\_

Signed on \_\_\_\_\_ [Date]

DO NOT SIGN BLANK OR INCOMPLETE FORMS  
RETAIN A COPY

Sample

**FULL UNCONDITIONAL WAIVER OF LIEN**

My/our Contract with \_\_\_\_\_ to provide  
\_\_\_\_\_ for the improvement of  
general description of what was provided

the property described as: **[insert legal description of property or type in "see attached" and attach legal description from Notice of Commencement].**

having been fully paid and satisfied, all my/our Construction Lien rights against such property are hereby waived and released.

\_\_\_\_\_  
[Signature of Lien Claimant]

Address:

\_\_\_\_\_

\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

Signed on \_\_\_\_\_ [Date]

DO NOT SIGN BLANK OR INCOMPLETE FORMS  
RETAIN A COPY



Sample

**FULL CONDITIONAL WAIVER OF LIEN**

My/our Contract with \_\_\_\_\_ to provide \_\_\_\_\_  
other contracting party general description of what was provided

for the improvement of the property described as: **[insert legal description of property or type in "see attached" and attach legal description from Notice of Commencement]**.

having been fully paid and satisfied, all my/our Construction Lien rights against such property are hereby waived and released.

This Waiver is conditioned on actual payment of \$\_\_\_\_\_.  
final amount due

\_\_\_\_\_  
[Signature of Lien Claimant]

Address:

\_\_\_\_\_  
\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

Signed on \_\_\_\_\_ [Date]

DO NOT SIGN BLANK OR INCOMPLETE FORMS  
RETAIN A COPY

**Sample**

**DISCHARGE OF CONSTRUCTION LIEN**

KNOW ALL MEN BY THESE PRESENTS that \_\_\_\_\_  
your company's name and street address as set forth in Claim of Lien  
hereby certifies that the Construction Lien filed by \_\_\_\_\_ on the 25<sup>th</sup> day of \_\_\_\_\_  
(your company name)  
\_\_\_\_\_, 20\_\_\_\_, the same having been recorded in the office of the Register of Deeds for the County of \_\_\_\_\_,  
Michigan, at Liber \_\_\_\_ on Page \_\_\_\_ in the amount of \$\_\_\_\_\_ against the following described premises:

See attached legal description.

said Construction Lien is fully paid, satisfied and discharged.

Dated: \_\_\_\_\_

**[Company's Name and Address]**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said County, personally came  
\_\_\_\_\_ known to me to be the person named above and who executed the above instrument,  
(name of signatory)

and acknowledged that he/she executed the same for the intents and purposes therein mentioned.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_, Michigan

My Commission Expires: \_\_\_\_\_

## CONSTRUCTION LIEN CHECKLIST

### **I. PRIVATE PROJECT SUBJECT TO THE MICHIGAN CONSTRUCTION LIEN ACT.**

The following Checklist is intended to address the procedure available to when you are a subcontractor and supplier. The same procedure will apply when you are a prime contractor with the obvious revisions necessary in that scenario. Also, remember when you are a prime contractor, you must respond to your subcontractor and/or suppliers requests for forms (Step 1) within ten days.

To preserve rights under the Michigan Construction Lien Act, the following steps must be completed:

#### UPON SIGNING CONTRACT

Step 1: Certified letter to prime contractor requesting copy of "Notice of Commencement" and blank "Notice of Furnishing" form.

Date certified letter mailed: \_\_\_\_\_

Receipt of certified letter in file?     Yes\_\_\_\_ No\_\_\_\_

"Green card" in file?                         Yes\_\_\_\_ No\_\_\_\_

Date items received from prime: \_\_\_\_\_

Notice of Commencement in file? Yes\_\_\_\_ No\_\_\_\_

Note: All certified mail must be "return receipt requested" (i.e. green card).

Note: If supplying materials only to prime or subcontractors, or if acting as a second-tier subcontractor, written request for Notice of Commencement should be made to the person or company with whom you have your contract or purchase order. Step 2, serving Notice of Furnishing, does not change.

### **UPON RECEIVING NOTICE OF COMMENCEMENT**

Step 2: "Notice of Furnishing" completed and sent by certified mail to:

- a. Prime and
- b. Owner Designee (if none, send to Owner or Lessee) named in "Notice of Commencement" on following date: \_\_\_\_\_.
- c. Certified mail receipts for both in file? Yes\_\_\_\_ No\_\_\_\_
- d. "Green card" for both in file? Yes\_\_\_\_ No\_\_\_\_

Note: This Step and Step 3 are not necessary for the prime contractor or any party contracting directly with the Owner.

**WARNING:** *Notice of Furnishing must be served by certified mail or personal delivery WITHIN TWENTY DAYS OF FIRST FURNISHING labor, materials or supplies to project.*

Step 3: Prepare a notarized "Proof of Service of Notice of Furnishing" and maintain in file for later use if a Claim of Lien must be filed. If "Notice of Furnishing" is personally delivered in lieu of certified mailing, the Proof of Service must specify who personally served it, where it was served, and the date it was served.

Proper completion of Steps 1 and 2 will preserve your right to later claim a Construction Lien. Step 3 is necessary because the Proof of Service must be reported along with a Claim of Lien.

### **LIEN CLAIMS**

**WARNING:** *Claim of Lien must be served and recorded in County records WITHIN NINETY DAYS OF LAST FURNISHING labor, materials or supplies to project.*

Step 4: Complete "Claim of Lien" form.

Step 5: Attach copy of "Proof of Service of Notice of Furnishing" and "Green Cards" showing receipt of Notices of Furnishing by Prime and Owner-Designee to completed Claim of Lien form.

Step 6: Record and complete Claim of Lien together with attachments from Step 5 in County records of the County where the project is physically located.

Step 7: Within (and no later than) fifteen days of recording the Claim of Lien, serve a completed copy of the recorded Claim of Lien via certified mail, return receipt requested upon Designee (if none, upon Owner or Lessee) named in Notice of Commencement. Complete the Proof of Service of Claim of Lien.

Upon completion of Steps 1 through 7, file should contain the following:

- \_\_\_\_\_ Copy of Certified Mail Request Letter and original Green Receipt Card for same (i.e., Step 1).
- \_\_\_\_\_ Copy of Notice of Commencement.
- \_\_\_\_\_ Copy of Notice of Furnishing, Proof of Service of Notice of Furnishing, and original Green Receipt Cards from both Prime and Owner-Designee (i.e., Steps 2 and 3).
- \_\_\_\_\_ Copy of Claim of Lien with attachments as recorded showing County records, Liber and Page number (i.e. Step 6).
- \_\_\_\_\_ Copy of Proof of Service of Claim of Lien and Green Receipt Card showing Owner-Designee receipt of Claim of Lien (i.e., Step 7).

**UPON BEING PRESENTED WITH A FINAL "WAIVER OF LIEN" FORM**

- Step 8: Review Waiver to determine whether Waiver is or is not conditional upon receipt of final payment. If not "conditional" it is a judgment call based upon the strength and reliability of Prime (or other, i.e., your Payor) whether to sign the Unconditional Waiver or require a Conditional Waiver.
- Step 9: Check with your Project Manager, Supervisor, Foreman, etc. to determine whether there are any outstanding claims for extra compensation on the project. If there are no outstanding claims, follow Step 8. If yes, obtain brief description and dollar amount of each claim, and be sure to reserve those claims in the face of the Waiver. [e.g.: outstanding claims for extra compensation totaling \$xxx.xx for idle equipment, etc., expressly reserved.]

## REQUEST FOR SWORN STATEMENT

Via Certified Mail # \_\_\_\_\_  
Return Receipt Requested

\_\_\_\_\_, 20\_\_

Re: Project No. \_\_\_\_\_

Dear \_\_\_\_\_:

We have received your Notice of Receipt of Sworn Statement dated \_\_\_\_\_, 20\_\_\_\_. In accordance with the Michigan Construction Lien Act, MCL 570.1101, et. seq., please provide a copy of the Sworn Statement provided by \_\_\_\_\_ for the above-referenced project within ten (10) days.

Thank you for your assistance.

Sincerely,

## SWORN STATEMENT

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn, deposes and says: That \_\_\_\_\_ is a/the (contractor)(subcontractor)(supplier) for an improvement to the following described real property situated in \_\_\_\_\_ County, Michigan, described as follows: *(insert legal description of property)*

That the following is a statement of each subcontractor and supplier and laborer, for which laborer the payment of wages or fringe benefits and withholdings is due but unpaid, with whom the (contractor)(subcontractor)(supplier) has (contracted)(subcontracted)(supplied material)(supplied labor) for performance under the contract with the owner or lessee thereof, and that the amounts due to the persons as of the date hereof are correctly and fully set forth opposite their names, as follows:

Name, address and telephone number of Subcontractor, Supplier, or Laborer	Type of Improvement Furnished	Total Contract Price	Amount Already Paid	Amount Currently Owning	Balance to Complete	Amount of Laborer Wages Due But Unpaid	Retention	Amount of Laborer Fringe Benefits and Withholdings Due But Unpaid
	TOTALS							

That the contractor has not procured material from, or subcontracted with, any person other than those set forth on the reverse side and owes no money for the improvement other than the sums set forth on the reverse side.

Deponent further says that he or she makes the foregoing statement as the (contractor)(subcontractor)(supplier) or as of the (contractor)(subcontractor)(supplier) for the purposes of representing to the owner or lessee of the premises described on the reverse side and his or her agents that the property described on the reverse side is free from claims of construction liens, or the possibility of construction liens, except as specially set forth on the reverse side hereof and except for claims of construction liens by laborers which may be provided pursuant to Section 109 of the Construction Lien Act, Act No. 497 of the Public Acts of 1980, as amended, being Section 570.1109 of the Michigan Compiled Laws.

**WARNING TO OWNER: AN OWNER OR LESSEE OF THE PROPERTY DESCRIBED ON THE REVERSE SIDE HEREOF MAY NOT RELY ON THIS SWORN STATEMENT TO AVOID THE CLAIM OF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR A LABORER WHO MAY PROVIDE A NOTICE OF FURNISHING PURSUANT TO SECTION 109 OF THE CONSTRUCTION LIEN ACT TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED.**

**"ON RECEIPT OF THIS SWORN STATEMENT, THE OWNER OR LESSEE, OR THE OWNER'S OR LESSEE'S DESIGNEE, MUST GIVE NOTICE OF ITS RECEIPT, EITHER IN WRITING, BY TELEPHONE, OR PERSONALLY, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING UNDER SECTION 109 OR, IF A NOTICE OF FURNISHING IS EXCUSED UNDER SECTION 108 OR 108A, TO EACH SUBCONTRACTOR, SUPPLIER, AND LABORER NAMED IN THE SWORN STATEMENT. IF A SUBCONTRACTOR, SUPPLIER, OR LABORER WHO HAS PROVIDED A NOTICE OF FURNISHING OR WHO IS NAMED IN THE SWORN STATEMENT MAKES A REQUEST, THE OWNER, LESSEE, OR DESIGNEE SHALL PROVIDE THE REQUESTER A COPY OF THE SWORN STATEMENT WITHIN 10 BUSINESS DAYS AFTER RECEIVING THE REQUEST."**

**WARNING TO DEPONENT: A PERSON, WHO WITH INTENT TO DEFRAUD, GIVES A FALSE SWORN STATEMENT IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, ACT NO. 497 OF THE PUBLIC ACTS OF 1980, AS AMENDED, BEING SECTION 570.1110 OF THE MICHIGAN COMPILED LAWS.**

\_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
(Deponent)

\_\_\_\_\_, Notary Public  
\_\_\_\_\_, County, Michigan

My commission expires: \_\_\_\_\_ 20\_\_\_\_\_  
Acting in \_\_\_\_\_ County