

CONSTRUCTION LIEN ACT (EXCERPT)
Act 497 of 1980

570.1110 Sworn statement by contractor or subcontractor; contents; form; notice of receipt; withholding from contractor or subcontractor amount due subcontractors, suppliers, laborers, or lien claimants; direct payments to lien claimants; notice; itemized statement; reliance on sworn statement to avoid claim; failure of contractor or subcontractor to provide sworn statement to owner or lessee prior to recording claim of lien; giving false sworn statement to owner or lessee as crime; total amount; prior convictions; prohibited use.

Sec. 110.

- (1) A contractor shall provide a sworn statement to the owner or lessee in each of the following circumstances:
- (a) When payment is due to the contractor from the owner or lessee or when the contractor requests payment from the owner or lessee.
 - (b) When a demand for the sworn statement has been made by or on behalf of the owner or lessee.
- (2) A subcontractor shall provide a sworn statement to the owner or lessee when a demand for the sworn statement has been made by or on behalf of the owner or lessee and, if applicable, the owner or lessee has complied with the requirements of subsection (6).
- (3) A subcontractor shall provide a sworn statement to the contractor when payment is due to the subcontractor from the contractor or when the subcontractor requests payment from the contractor.
- (4) A sworn statement shall list each subcontractor and supplier with whom the person issuing the sworn statement has contracted relative to the improvement to the real property. The sworn statement shall contain a list of laborers with whom the person issuing the sworn statement has contracted relative to the improvement to the real property and for whom payment for wages or fringe benefits and withholdings are due but unpaid and the itemized amount of such wages or fringe benefits and withholdings. The sworn statement shall be in substantially the following form:

SWORN STATEMENT

State of Michigan)

)
ss.

County of)

.....(deponent), being sworn, states the following:

..... is the (contractor) (subcontractor) for an improvement to the following real property in
County, Michigan, described as follows:

.....

(insert legal description of property)

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

Name, address, and tele-phone number of subcon-trac-tor, sup-plier, or laborer	Type of improve- ment fur- nished	Total con- tract price	Amount already paid	Amount cur- rently owing	Balance to com- plete (op- tional)	Amount of laborer wages due but unpaid	Amount of laborer fringe benefits and with-holdings due but unpaid
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.....

Totals

(Some columns are not applicable to all
persons listed)

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

I make this statement as the (contractor) (subcontractor) or as of the (contractor) (subcontractor) to represent to the owner or lessee of the property and his or her agents that the property is free from claims of construction liens, or the possibility of construction liens, except as specifically set forth in this statement and except for claims of construction liens by laborers that may be provided under section 109 of the construction lien act, 1980 PA 497, MCL 570.1109.

WARNING TO OWNER OR LESSEE: AN OWNER OR LESSEE OF THE PROPERTY SHALL 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 UNDER SECTION 109 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1109, TO THE DESIGNEE OR TO THE OWNER OR LESSEE IF THE DESIGNEE IS NOT NAMED OR HAS DIED.

IF THIS SWORN STATEMENT IS IN REGARD TO A RESIDENTIAL STRUCTURE, ON RECEIPT OF THE 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 IS ENTITLED TO NOTICE OF RECEIPT OF 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.

.....

Deponent

WARNING TO DEPONENT: A PERSON WHO GIVES A FALSE SWORN STATEMENT WITH INTENT TO DEFRAUD IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE CONSTRUCTION LIEN ACT, 1980 PA 497, MCL 570.1110.

Subscribed and sworn to before me on(DATE)

.....

Notary Public,..... County, Michigan.

My commission expires:

(5) The contractor or subcontractor is not required to list in the sworn statement material furnished by the contractor or subcontractor out of his or her own inventory that was not purchased specifically for performing the contract.

(6) On receipt of a sworn statement regarding an improvement to a residential structure, the owner, lessee, or designee shall 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 entitled to notice under this subsection requests a copy of the sworn statement, the owner, lessee, or designee shall provide the requester a copy within 10 business days after receiving the request.

(7) After the contractor or subcontractor provides the sworn statement, the owner or lessee may withhold or, upon written demand from the contractor, shall withhold from the amount due or to become due to the contractor or to the subcontractor for work already performed an amount sufficient to pay all sums due to subcontractors, suppliers, or laborers, as shown by the sworn statement, or due to lien claimants who have provided a notice of furnishing under section 109. From the amount withheld, the owner or lessee may directly pay subcontractors, suppliers, or laborers the amount they are due as shown by the sworn statement. If the contract provides for payments by the owner to the general contractor in the normal course of construction, but the owner elects to pay lien claimants directly under this section, the first time the owner elects to make payment directly to a lien claimant, he or she shall provide at least 5 business days' notice to the general contractor of the intention to make direct payment. Subsequent direct disbursements to lien claimants need not be preceded by the 5-day notice provided in this section unless the owner first returns to the practice of paying all sums to the general contractor. As between the owner or lessee and the contractor or subcontractor, all payments made under this subsection are considered the same as if paid directly to the contractor or subcontractor. If an amount is withheld under this subsection from the contractor or subcontractor, the owner or lessee, upon request, shall prepare and provide to the contractor or subcontractor an itemized statement of the sums withheld. If an amount is paid directly to a lien claimant under this section, the owner or lessee shall, if requested by the contractor or subcontractor, provide to the contractor or subcontractor an itemized statement of the sums paid.

(8) An owner, lessee, designee, mortgagee, or contractor may rely on a sworn statement prepared by a party other than himself or herself to avoid the claim of a subcontractor, supplier, or laborer unless the subcontractor, supplier, or laborer has provided a notice of furnishing as required under section 109 or unless the notice of furnishing is excused under section 108 or 108a.

(9) If a contractor fails to provide a sworn statement to the owner or lessee before recording the contractor's claim of lien, the contractor's construction lien is not invalid. However, the contractor is not entitled to any payment, and a complaint, cross-claim, or counterclaim may not be filed to enforce the construction lien, until the sworn statement has been provided.

(10) If a subcontractor fails to provide a sworn statement under subsection (2) to the owner or lessee before recording the subcontractor's claim of lien, the subcontractor's construction lien is valid. However, a complaint,

cross-claim, or counterclaim may not be filed to enforce the construction lien until the sworn statement has been provided.

(11) A contractor or subcontractor who desires to draw money and gives or causes to be given to any owner or lessee a sworn statement required by this section that is false, with intent to defraud, is guilty of a crime as follows:

(a) If the statement involved is for less than \$200.00, the contractor or subcontractor is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the statement amount, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the contractor or subcontractor is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the statement amount, whichever is greater, or both imprisonment and a fine:

(i) The statement involved is for \$200.00 or more but less than \$1,000.00.

(ii) The statement involved is for less than \$200.00 and the contractor or subcontractor has 1 or more prior convictions for committing or attempting to commit an offense under this act.

(c) If any of the following apply, the contractor or subcontractor is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the statement amount, whichever is greater, or both imprisonment and a fine:

(i) The statement involved is for \$1,000.00 or more but less than \$20,000.00.

(ii) The statement involved is for more than \$200.00 but less than \$1,000.00 and the contractor or subcontractor has 1 or more prior convictions for violating or attempting to violate this act. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation described in subdivision (a) or (b)(ii).

(d) If any of the following apply, the contractor or subcontractor is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the statement amount, whichever is greater, or both imprisonment and a fine:

(i) The statement involved is for \$20,000.00 or more.

(ii) The statement involved is for \$1,000.00 or more but less than \$20,000.00 and the contractor or subcontractor has 2 or more prior convictions for committing or attempting to commit an offense under this act. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation described in subdivision (a) or (b)(ii).

(12) For purposes of subsection (11), statements involved in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total amount involved in the statements.

(13) If the prosecuting attorney intends to seek an enhanced sentence for a violation under this section based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include in the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

(a) A copy of the judgment of conviction.

(b) A transcript of a prior trial, plea-taking, or sentencing.

(c) Information contained in a presentence report.

(d) The defendant's statement.

(14) If the sentence for a conviction under this section is enhanced by 1 or more convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

History: 1980, Act 497, Eff. Jan. 1, 1982 ;-- Am. 1981, Act 191, Eff. Jan. 1, 1982 ;-- Am. 1982, Act 17, Eff. Mar. 1, 1982 ;-- Am. 2001, Act 151, Eff. Jan. 1, 2002 ;-- Am. 2006, Act 572, Imd. Eff. Jan. 3, 2007 ;-- Am. 2007, Act 28, Imd. Eff. June 28, 2007