

Act No. 367
Public Acts of 2018
Approved by the Governor
December 12, 2018
Filed with the Secretary of State
December 12, 2018
EFFECTIVE DATE: December 12, 2018

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Senators Booher, Proos, Nofs, Jones, MacGregor and Hertel

ENROLLED SENATE BILL No. 465

AN ACT to amend 1980 PA 497, entitled “An act to establish, protect, and enforce by lien the rights of persons performing labor or providing material or equipment for the improvement of real property; to provide for defenses to construction liens; to provide remedies and prescribe penalties; and to repeal acts and parts of acts,” 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:

Sec. 104. (1) “Court” means the circuit court in which an action to enforce a construction lien through foreclosure is pending.

(2) “Design professional” means an individual who is licensed or registered as an architect, professional engineer, or professional surveyor under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014, or a corporation, partnership, limited liability company, or other legal entity that is authorized under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014, to engage in the practice of any of these professions.

(3) “Designee” means a person named by an owner or lessee to receive, on behalf of the owner or lessee, all notices or other instruments required to be furnished under this act. The owner or lessee may name himself or herself as designee. The owner or lessee may not name the contractor as designee. However, a contractor who is providing only architectural or engineering services may be named as designee.

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

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

(6) "Improvement" means the result of labor or material provided by a contractor, subcontractor, supplier, or laborer, including, but not limited to, surveying, engineering and architectural planning, construction management, clearing, demolishing, excavating, filling, building, erecting, constructing, altering, repairing, ornamenting, landscaping, paving, leasing equipment, and installing or affixing a fixture or material, pursuant to a contract.

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

Sec. 106. (1) "Person" means an individual, corporation, partnership, association, other legal entity, or any combination of these.

(2) "Professional services" means services that are customarily and legally performed by or under the supervision or responsible control of design professionals in the course of their professional practice, including, but not limited to, programming, planning, surveying, site investigation, analysis, assessment, design, preparation of drawings and specifications, and construction administration services.

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

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

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

(6) "Supplier" means a person who, pursuant to a contract with a contractor or a subcontractor, leases, rents, or in any other manner provides material or equipment that is used in the improvement of real property. Supplier does not include a design professional or a person that has a subcontract with a design professional as described in section 107b.

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

Sec. 107a. (1) A design professional who enters into a written contract with an owner, or with a person acting as an agent of the owner, to provide professional services relating to the proposed or actual erection, alteration, repair, or removal of a structure on or other improvement to real property may record a notice with the register of deeds for the county in which the property is located. The notice must be in substantially the following form:

NOTICE OF PROFESSIONAL SERVICES CONTRACT

Under a written contract dated _____ between _____, owner, and _____, design professional, the design professional is to furnish or has furnished professional services relating to the proposed or actual erection, alteration, repair, or removal of a structure on or other improvement to real property described as follows:

Insert description of services

The legal description of the real property is as follows:

Insert legal description

(2) A design professional may record a notice under subsection (1) at any time after the written contract is executed regardless of whether the professional services under the written contract have been commenced or completed, and regardless of whether the erection, alteration, repair, or removal of the structure or the other improvement to which the professional services relate has been, or is ever, commenced or completed. However, a design professional shall not record a notice later than 90 days after the design professional, or another person acting by, through, or under the design professional, last performed professional services.

(3) A notice under this section is valid for 1 year after the date it is recorded. The design professional may record a subsequent notice with respect to the written contract. All of the requirements of this section, including the time limitation of subsection (2), apply to a subsequent notice.

(4) If an actual physical improvement is made to the property after a notice is recorded under this section, the notice is only effective from the date of the first actual physical improvement.

(5) This section, or the recording of a notice under this section, does not affect the requirements of this act regarding the creation of a construction lien, including requirements of section 107, the steps necessary to claim a lien, or the manner of enforcing a lien.

Sec. 107b. (1) A person that furnishes professional services under a written subcontract with a design professional who has recorded a notice under section 107a, and whose engagement has been approved in writing by or on behalf of the owner of the property, may record with the register of deeds for the county in which the property is located a notice of the subcontract in substantially the following form:

NOTICE OF PROFESSIONAL SERVICES SUBCONTRACT

Under a written subcontract dated _____ between _____, design professional, and _____, as sub-design professional, _____ is to furnish or has furnished professional services relating to the proposed or actual erection, alteration, repair, or removal of a structure on or other improvement to real property described as follows, which services are a portion of the services furnished or to be furnished by the design professional under a written original contract with _____, the owner:

Insert description of services rendered

The legal description of the real property is as follows:

Insert legal description

At the time of this notice, an account of the subcontract is as follows:

1. Estimated or agreed contract price: _____
2. Approved extra or additional services: _____
3. Payments received: _____

The regular mailing address of the subcontracting party recording this notice is as follows:

Insert address

(2) A person entitled to record a notice of contract under subsection (1) may record the notice at any time after the execution of the written subcontract regardless of whether the professional services under the written subcontract have been commenced or completed, and regardless of whether the construction, alteration, repair, or removal of the structure or the other improvement to which the professional services relate has been, or is ever, commenced or completed. However, the person shall not record the notice later than 90 days after the last day a design professional who is entitled to record a notice under this section or section 107a, or any person claiming by, through, or under the design professional, performed professional services for the project.

(3) A notice under this section is valid for 1 year after the date it is recorded. The person furnishing professional services under the written contract with a design professional may record a subsequent notice with respect to the written contract. All of the requirements of this section, including the time limitation of subsection (2), apply to a subsequent notice.

(4) If an actual physical improvement is made to the property after a notice is recorded under this section, the notice is only effective from the date of the first actual physical improvement.

(5) This section, or the recording of a notice under this section, does not affect the requirements of this act regarding the creation of a construction lien, including requirements of section 107, the steps necessary to claim a lien, or the manner of enforcing a lien.

Sec. 108. (1) Before the commencement of any improvements to real property, the owner or lessee contracting for the improvements shall record in the office of the register of deeds for each county in which the real property to be improved is located a notice of commencement, in the form set forth in this section. If all improvements relate to a single project only 1 notice of commencement need be recorded. A subsequent notice of commencement need not be recorded for an improvement to real property that currently has a notice of commencement recorded in the office of the register of deeds if the recorded notice of commencement contains the same information as the subsequent notice of commencement.

(2) A notice of commencement required under this section must contain the following information:

(a) The legal description of the real property on which the improvement is to be made. A description that conforms to section 212 or 255 of the land division act, 1967 PA 288, MCL 560.212 and 560.255, is a sufficient legal description.

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

(c) 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.

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

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

(f) The following statement:

“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 that has a construction lien may preserve the lien by providing a notice of furnishing to the designee named above and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person that has a construction lien because of work performed on this improvement should refer to the name of the owner or lessee and the legal description that appears in this notice. A person that subsequently acquires 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 by making a written request by certified mail to the owner or lessee named above; the designee; or the person with whom you have contracted.”

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

(h) An affidavit of the owner or lessee or the agent of the owner or lessee that verifies the notice.

(3) A copy of a notice of commencement required under this section must have a blank notice of furnishing as described in section 109 attached to it. The blank notice of furnishing must be easily detachable from the copy of the notice and need not be recorded.

(4) Incorrect information contained in a notice of commencement furnished by or for an owner or lessee does not affect adversely the rights of a lien claimant as against the property of the owner or lessee.

(5) An owner, lessee, or designee required to record a notice of commencement under this section, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer, shall provide a copy of the notice of commencement, with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer.

(6) A contractor who has been provided with a notice of commencement from an owner, lessee, or designee, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the contractor, shall provide a copy of the notice of commencement, with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer.

(7) A subcontractor who has been provided with a notice of commencement from an owner, lessee, designee, contractor, or subcontractor, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the subcontractor, shall provide a copy of the notice of commencement, with an attached blank notice of furnishing form, to the requesting subcontractor, supplier, or laborer.

(8) An owner, lessee, or designee required to record a notice of commencement under this section shall post and keep posted a copy of the notice of commencement in a conspicuous place on the real property described in the notice during the course of the improvement to the real property.

(9) An owner, lessee, or designee required to record a notice of commencement under this section shall provide a copy of the notice of commencement to the general contractor, if any. An owner, lessee, or designee that fails to provide the notice of commencement to the general contractor is liable to the general contractor for all actual expenses sustained by the general contractor in obtaining the information otherwise provided by the notice of commencement.

(10) Failure of an owner, lessee, or designee to record a notice of commencement as required by this section extends the time within which a subcontractor or supplier may provide a notice of furnishing, as described in section 109, until 20 days after the notice of commencement has been recorded.

(11) Failure of an owner, lessee, or designee to provide, on written request, a notice of commencement as required by this section extends the time within which a subcontractor or supplier may provide a notice of furnishing, as described in section 109, until 20 days after the notice of commencement actually has been furnished to the subcontractor or supplier.

(12) Failure of an owner, lessee, or designee to record a notice of commencement as required by this section extends the time within which a laborer may provide a notice of furnishing, as described in section 109, until 30 days after the notice of commencement has been recorded, or until the time in which to provide the notice of furnishing in accordance with section 109 expires, whichever is later.

(13) Failure of an owner, lessee, or designee to provide a notice of commencement as required by this section extends the time within which a laborer may provide a notice of furnishing, as described in section 109, until 30 days after the notice of commencement has been provided, or until the time in which to provide the notice of furnishing in accordance with section 109 expires, whichever is later.

(14) An owner, lessee, or designee that fails to post or keep posted a copy of a notice of commencement as required by subsection (8) is liable to a subcontractor, supplier, or laborer who becomes a lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the posting.

(15) A contractor who has been provided with a notice of commencement from an owner, lessee, or designee, who fails to provide the notice of commencement on the request of a lien claimant who has a direct contract with the contractor for an improvement to the property is liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the notice of commencement.

(16) A subcontractor who has been provided with a notice of commencement from an owner, lessee, designee, contractor, or subcontractor who fails to provide the notice of commencement on the request of a subcontractor, supplier, or laborer who has a direct contract with the subcontractor is liable to the requesting subcontractor, supplier, or laborer for all actual expenses sustained by the subcontractor, supplier, or laborer in obtaining the information otherwise provided by the notice of commencement.

(17) If the owner, lessee, or designee fails to provide, record, and post the notice of commencement as provided in this act and if, after the first improvement, the contractor by certified mail makes a written request to the owner, lessee, or designee to provide, record, and post the notice of commencement and the owner, lessee, or designee fails within 10 days after receipt of the request to do so, the owner or lessee is barred from requiring the contractor to hold the owner or lessee harmless from the lien of a lien claimant to the extent the lien could have otherwise been avoided through proper payment had the request been complied with. If the contractor pays a valid lien claim at the direction of the owner, lessee, or designee after the owner, lessee, or designee has failed to comply with this section, the owner or lessee is liable to the contractor to the extent the lien could have otherwise been avoided through proper payment had the request been complied with. This subsection does not apply if the name of the lien claimant appears on a sworn statement provided to the contractor and the claim of the lien claimant could have been avoided had payment been made in accordance with the sworn statement.

(18) This section does not apply to an improvement to a residential structure.

Sec. 108a. (1) An owner or lessee who contracts for an improvement to a residential structure shall prepare and provide a notice of commencement to a contractor, subcontractor, supplier, or laborer who has made a written request for the notice as provided in this section.

(2) A notice of commencement required under this section must contain the following information:

(a) The legal description of the real property on which the improvement is to be made. A description that conforms to section 212 or 255 of the land division act, 1967 PA 288, MCL 560.212 and 560.255, is a sufficient legal description.

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

(c) 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.

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

(e) The name and address of the general contractor, if any. The notice of commencement form must contain the following caption below the line for the general contractor's name and address: (the name of the person with whom you have contracted to provide substantially all the improvements to the property.)

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

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

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

(g) The following statement:

"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 that has a construction lien may preserve the lien by providing a notice of furnishing to the designee named above and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person that has a construction lien because of work performed on this improvement should refer to the name of the owner or lessee and the legal description in this notice. A person that subsequently acquires 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 on making a written request by certified mail to the owner or lessee named above; the designee; or the person with whom you have contracted.”

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

(i) An affidavit of the owner or lessee or the agent of the owner or lessee that verifies the notice.

(3) A copy of a notice of commencement required under this section must have a blank notice of furnishing as described in section 109 attached to it. The blank notice of furnishing must be easily detachable from the copy of the notice and need not be recorded.

(4) Incorrect information contained in a notice of commencement furnished by or for an owner or lessee under this section does not affect adversely the rights of a lien claimant as against the property of the owner or lessee.

(5) An owner, lessee, or designee required to provide a notice of commencement under this section, within 10 days after the date of mailing of a written request by certified mail from a contractor, subcontractor, supplier, or laborer, shall prepare and provide a copy of the notice of commencement, with an attached blank notice of furnishing form, to the contractor, subcontractor, supplier, or laborer. A contractor, subcontractor, supplier, or laborer who requests a notice of commencement from an owner or lessee of a residential structure shall supply a blank notice of commencement form with the attached blank notice of furnishing to the owner or lessee at the time the request is made.

(6) A contractor who has been provided with a notice of commencement under this section from the owner, lessee, or designee, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the contractor, shall provide a copy of the notice of commencement, with an attached blank notice of furnishing form, to the subcontractor, supplier, or laborer. If the contractor has not been provided a notice of commencement, the contractor shall provide the subcontractor, supplier, or laborer the name and address of the owner or lessee.

(7) A subcontractor who has been provided with a notice of commencement under this section from the owner, lessee, designee, or contractor, or another subcontractor, within 10 days after the date of mailing of a written request by certified mail from a subcontractor, supplier, or laborer who has a direct contract with the subcontractor, shall provide a copy of the notice of commencement, with an attached blank notice of furnishing form, to the requesting subcontractor, supplier, or laborer. If the subcontractor has not been provided a notice of commencement, the subcontractor shall provide to the requesting subcontractor, supplier, or laborer, the name and address of the owner or lessee.

(8) If an owner, lessee, or designee has received a blank notice of commencement form under subsection (5) and if the owner or lessee does not currently reside at the real property described in the notice of commencement, the owner, lessee, or designee shall post a copy of the notice of commencement in a conspicuous place on the real property during the course of the improvement to the real property.

(9) Failure of an owner, lessee, or designee to provide, on written request, a notice of commencement as required by this section extends the time within which a subcontractor or supplier may provide a notice of furnishing, as described in section 109, until 20 days after the notice of commencement actually has been furnished to the subcontractor or laborer.

(10) Failure of an owner, lessee, or designee to provide a notice of commencement as required by this section extends the time within which a laborer may provide a notice of furnishing, as described in section 109, until 30 days after the notice of commencement actually has been furnished to the laborer, or until the time in which to provide the notice of furnishing in accordance with section 109 expires, whichever is later.

(11) An owner, lessee, or designee that fails to post or keep posted a copy of a notice of commencement as required by subsection (8) is liable to a subcontractor, supplier, or laborer who becomes a lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the posting.

(12) A contractor that has been provided with a notice of commencement from the owner, lessee, or designee and that fails to provide the notice of commencement on the request of a lien claimant that has a contract with the contractor for an improvement to the property is liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the information otherwise provided by the notice of commencement. A contractor that fails to provide the name and address of the owner or lessee as required by subsection (6) is liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the name and address of the owner or lessee.

(13) A subcontractor that has been provided with a notice of commencement from the owner, lessee, designee, contractor, or subcontractor and that fails to provide the notice of commencement on the request of a subcontractor, supplier, or laborer who has a direct contract with the subcontractor is liable to the subcontractor, supplier, or laborer for all actual expenses sustained by the subcontractor, supplier, or laborer in obtaining the information otherwise provided by the notice of commencement. A subcontractor that fails to provide the name and address of the owner or lessee as required by subsection (7) is liable to the lien claimant for all actual expenses sustained by the lien claimant in obtaining the name and address of the owner or lessee.

(14) This section only applies to an improvement to a residential structure.

Sec. 109. (1) Except as otherwise provided in sections 108 and 108a, a subcontractor or supplier that contracts to provide an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, as named in the notice of commencement at the address shown in the notice of commencement, either personally or by certified mail, within 20 days after furnishing the first labor or material. If a designee has not been named in the notice of commencement, or if the designee has died, service must be made on the owner or lessee named in the notice of commencement. If service of the notice of furnishing is made by certified mail, service is complete on mailing. A contractor is not required to provide a notice of furnishing to preserve lien rights arising from his or her contract directly with an owner or lessee.

(2) Except as otherwise provided in sections 108 and 108a, a laborer who contracts to provide an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, as named in the notice of commencement at the address shown in the notice of commencement, either personally or by mail, within 30 days after wages were contractually due but were not paid. If a designee has not been named in the notice of commencement, or if the designee has died, service must be made on the owner or lessee named in the notice of commencement. If service of the notice of furnishing is made by mail, service is complete on mailing by first-class mail with postage prepaid.

(3) Except as otherwise provided in sections 108 and 108a, a laborer who provides an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, named in the notice of commencement at the address shown in the notice of commencement, either personally or by certified mail, by the fifth day of the second month following the month in which fringe benefits or withholdings from wages were contractually due but were not paid. If a designee has not been named in the notice of commencement, or if the designee has died, service must be made on the owner or lessee named in the notice of commencement. If service of the notice of furnishing is made by certified mail, service is complete on mailing.

(4) A notice of furnishing, if not given on the form attached to the notice of commencement, must be in substantially the following form:

NOTICE OF FURNISHING

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

.....
(address 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 improvements to the real property described in the notice of commencement recorded in
liber , on page , records,
(name of county)

.....
or (a copy of which is attached to this notice)

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE MICHIGAN CONSTRUCTION LIEN ACT.
IF YOU HAVE 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
IMPROVEMENTS TO YOUR PROPERTY.

.....
(name and address of lien claimant)

by
(name and capacity of party signing for lien claimant)

.....
(address of party signing)

Date:

(5) The failure of a lien claimant to provide a notice of furnishing within the time specified in this section does not defeat the lien claimant's right to a construction lien for work performed or materials furnished by the lien claimant after the service of the notice of furnishing.

(6) The failure of a lien claimant to provide a notice of furnishing within the time specified in this section does not defeat the lien claimant's right to a construction lien for work performed or materials furnished by the lien claimant before the service of the notice of furnishing except to the extent that payments were made by or on behalf of the owner

or lessee to the contractor pursuant to either a contractor's sworn statement or a waiver of lien in accordance with this act for work performed or material delivered by the lien claimant. This subsection does not apply to a laborer.

(7) The failure of a laborer to provide a notice of furnishing to the designee as required by subsection (2) defeats the laborer's lien for the wages for which the notice of furnishing is required.

(8) The failure of a laborer to provide a notice of furnishing to the designee as required by subsection (3) defeats the laborer's lien for the fringe benefits and withholdings for which the notice of furnishing is required.

(9) The failure of a laborer to provide a notice of furnishing to the general contractor within the time specified in subsection (2) or (3) does not defeat the laborer's right to a construction lien, but the laborer is liable for any actual damages sustained by the general contractor as a result of the failure.

(10) One or more laborers may authorize an agent to prepare and serve a notice of furnishing in the manner provided in this section. Notice of furnishing under this section may contain the notice of furnishing of more than 1 laborer and must contain the information required by subsection (4) as to each laborer for whom it is prepared. A court shall consider the notice of furnishing of each lien claimant under this subsection on its own merits.

Sec. 112. (1) If a notice of professional services contract, notice of professional services subcontract, notice of commencement, claim of lien, certificate of discharge of lien, or a certificate of a county clerk that no proceedings to enforce a construction lien have been commenced within the period provided by law is recorded in the office of a register of deeds, the register shall endorse on the instrument the date of its recording and properly index the instrument.

(2) The fee for recording an instrument described in subsection (1) is the same as the fee for recording a real estate mortgage under section 2567 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2567.

(3) The recording of a notice of professional services contract, notice of professional services subcontract, notice of commencement, or claim of lien operates as constructive notice to subsequent purchasers or encumbrancers in the same manner as the recording of a real estate mortgage.

Sec. 119. (1) Except as otherwise provided by subsection (4), as between parties entitled to claim construction liens under this act, the liens have equal priority. This subsection applies and the construction liens have equal priority regardless of whether the lien arises at the time of the first actual physical improvement or at the time a notice is recorded under section 107a or 107b.

(2) A construction lien under this act has priority over all garnishments for the contract debt made after the lien arises, without regard to the date of recording of the claim of lien.

(3) A construction lien arising under this act has priority over all other interests, liens, or encumbrances that may attach to the building, structure, or improvement, or on the real property on which the building, structure, or improvement is erected, if the other interests, liens, or encumbrances are recorded after the construction lien arises.

(4) A mortgage, lien, encumbrance, or other interest recorded before the construction lien arises has priority over a construction lien arising under this act. The priority of the mortgage exists as to all obligations secured by the mortgage except for indebtedness arising out of advances made after the construction lien arises. An advance made pursuant to the mortgage, but after the construction lien arises, has priority over a construction lien if, for that advance, the mortgagee has received a contractor's sworn statement as provided in section 110, has made disbursements pursuant to the contractor's sworn statement, and has received waivers of lien from the contractor and all subcontractors, laborers, and suppliers who have provided notices of furnishing. The construction lien of a lien claimant not set forth on the sworn statement on which an advance was made is subordinate to the lien of the mortgage, including the advance, unless before the advance the lien claimant provided the designee with a notice of furnishing if required by section 109 or recorded a claim of lien. An advance made after a notice of furnishing has been provided or has been excused as provided in sections 108, 108a, and 109 or after a claim of lien has been recorded is subordinate to the construction lien of the lien claimant unless before the advance the mortgagee received from the lien claimant either a full unconditional waiver of lien or a partial unconditional waiver of lien for the full amount due the lien claimant as of the date through which the lien is waived as shown on the lien waiver and the date through which the lien is waived as shown on the partial unconditional waiver is within 30 days before the advance.

(5) For purposes of this section, retainage that is not payable under a contract until a certain event happens in addition to an improvement being provided, is not due as of the date the improvement is provided.

(6) For purposes of determining priorities under this section, a construction lien arises as follows:

(a) Except as provided in subdivision (b), at the time of the first actual physical improvement.

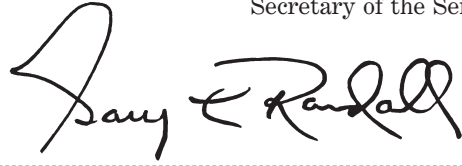
(b) As to a lien claimed by a person after the person has recorded a notice under section 107a or 107b, at the time a notice is recorded, subject to any applicable limitation under section 107a(4) or 107b(4).

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

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor