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What Contractors Need to Know about the Construction Lien Act

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Construction workers are some of the hardest working people I know. One thing I've noticed is that many contractors become so focused on their work that they sometimes neglect some of the other important things required to effectively run and protect their business. One important way to protect your business is to understand the basic requirements of the Michigan Construction Lien Act ("CLA") and how it can protect you in the event of non-payment. Here are a few things you should know about the CLA:

Notice of Commencement: A Notice of Commencement should be requested upon signing the contract with the owner or the general contractor. This document is important because it identifies crucial information about the project - the owner of the property, the general contractor and the legal description of the property.

Notice of Furnishing: A Notice of Furnishing ("NOF") is a document required by the CLA so that parties involved with a project can protect themselves. Parties who supply labor or material and who do not have a direct contract with the owner must provide an NOF to the owner and to the general contractor within 20 days after furnishing the first labor or material. Failure to provide this form does not defeat your right to a construction lien for work performed or material furnished *after* the NOF is provided, but it does defeat your lien rights to anything performed or provided *before*.

Waiver of Lien: Because most owners and lenders on a construction project want to maintain clear title to the property, most require a waiver of your lien rights in exchange for payment. There are 4 different waivers: (1) partial conditional waiver (you partially waive your lien rights on the condition that you will receive a partial payment for the work you've provided); (2) partial unconditional waiver (you partially waive your lien rights in exchange for partial payment for the work you've provided); (3) full conditional waiver (you waive all lien rights on the condition you will receive the agreed upon payment); and (4) full unconditional waiver (you waive all lien rights in exchange for payment in full for the work you've provided.) There is no reason to fear a conditional waiver, as the CLA protects you by providing that lien waivers are effective only upon payment.

Claim of Lien: The Claim of Lien is notice to the world that a lien is being claimed for non-payment of labor and/or material. The Claim of Lien must be recorded with the register of deeds, and attaches to the title history of the property at issue. It also places the owner and the general contractor on notice that a lien claimant has not been paid for their labor and/or material. The Claim of Lien is often an effective and economical tool to assist a contractor, subcontractor or supplier in getting paid, short of filing a lawsuit and incurring expensive litigation costs.

Timing Requirements: The CLA states that if a lien claimant does not record the Claim of Lien within 90 days after it furnished labor or material, the lien is invalid as a matter of law. In addition, if you properly file a Claim of Lien, you must file a lawsuit to enforce the Claim of Lien within 1 year after the Claim of Lien was recorded. If not, the lien becomes invalid as a matter of law.

It is important to remember that if you miss a deadline under the CLA, you still have rights under your contract. However, knowing your rights under the CLA often helps you avoid litigation costs down the road by giving you additional tools to protect and enforce your right to be paid for the labor and/or material provided on a job.