

BUSINESS REVIEW

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Navigating Michigan's Construction Lien Act

By Robb Krueger

Construction liens can create legal and financial difficulties for businesses building, expanding or renovating commercial real estate. For those with a fiduciary responsibility or interest in a construction project, oversight of the payment process should include a clear understanding of Michigan's Construction Lien Act.

At the commencement of any construction project, an owner should create a project file to collect all lien-related documents received during the construction process that may be reviewed on an ongoing basis with the design professional or legal counsel, in the event problems arise.

The notice of commencement is the foundation upon which most, or all, of the other lien filings occurring on a construction project are based. It is filed by the property owner or his agent with the register of deeds in the county where the property is located, as well as posted at the construction site. It essentially serves as an invitation to the lien process by notifying potential lien claimants of the pertinent facts regarding ownership and legal description of the subject property.

An owner should make sure that

copies of the notice of commencement are freely available to all parties contributing to the project in any capacity. Failure to file or make available this notice may prejudice the owner's right to insist on compliance with other provisions of the Lien Act.

For a business owner, the single most important piece of information contained on the notice of commencement is the name and address of the person designated to receive lien notices on behalf of the owner. This person is referred to on the notice of commencement as the owner's designee.

The designee can be the owner or the owner's agent on the project, such as the architect supervising the project. Current contact information for the designee — including name and address — should be included on the notice and updated when changes occur during the project.

When a lender has a mortgage interest in the property, the loan documents related to the project often will require that the lender or the lender's agent be named as the designee. Sometimes a third party, such as a title office, serves as the designee and monitors disbursements on behalf of the lender.

The Lien Act expressly prohibits the

general contractor or any contractor providing something other than design or engineering services from serving as the designee on the notice of commencement. This keeps the proverbial fox out of the hen house and helps curb mismanagement of funds by preventing the nonpayment of downstream parties from going unnoticed.

A proper notice of commencement is essential to ensure receipt by an owner or their representative of the relevant information that follows its filing — including the identity of any potential lien claimants in the chain of contracting.

An owner should participate in the selection of the designee and know where lien-related documents will be available for review during the construction project. For more information regarding a notice of commencement or the information that should appear on the notice as required by statute, refer to MCL 570.1108 or review this document with a lawyer before commencing construction.

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