

**Interpretations Of
Article 1 through 6
Article 24
Lien Laws**

CHAIN OF COMMAND

Governor (House & Senate)

Create, debate and vote on laws to govern.

Licensing & Regulatory Affairs (LARA)

Director (appointed by the Governor) and staff.

Function: Investigate complaints

Approve or decline license applications upon the board's recommendation

Bureau of Commercial Services

Function: Fulfill administrative needs of Director and Board

Board of Residential Builders and M & A Contractors

6 licensed builders = 4 residential and 2 M & A

3 general public (1 residential building inspector)

Governor appoints board members with consent Senate.

Board members can serve two (2) 4-year terms.

Functions:

- **Create rules to help board fulfill duties that do not conflict with Michigan Law.**
- **Help Director interpret the laws.**
- **Set minimum standards for occupations.**
- **Access penalties for violation of the laws**
- **State Building Inspector**
- **Enforce Michigan Residential Code 2006. Can be called on by the DLEG to investigate a complaint.**
- **Local Building Inspector**
- **Enforce State Code & Local Ordinances**
- **Customer**
- **Residential Builder or M & A Contractor**

Article #2 Highlights

339.201 Director is appointed by the governor. Director's job is to investigate licensees or persons against whom a complaint is filed and to qualify new applicants.

339.202

1. Applicant must apply on the application form provided by the department
2. All licenses are subject to an expiration date (no exceptions)

339.203

1. It is possible for a person to be granted a license without passing the test. If a person is having difficulty passing the test they can request an oral test. The Department can approve an applicant this way.
2. A person who requests an oral test is subject to the possibility of having limitations placed upon their license. Example: a maintenance and alterations contractor for concrete can only pour concrete for sidewalks and driveways. They are not to pour foundations.

A person who is subject to limitations has a right to request a review of this decision. The Department may impose limitations, but they must submit this action to the Board for approval. The Board must approve or disapprove within 60 days or the limitation will go into effect.

339.204

1. A. A renewal for license must be provided on the appropriate application form on or before the expiration date on the license.
B. The license fee must be included
C. Applicants must meet the requirement for renewal
2. If a person does not meet the requirements for renewal, they can request a hearing before the Board. **Example:** A person not meeting the requirements for renewal because of a past disciplinary action during the previous license cycle, the Department denies the renewal request.
3. A person who has requested a hearing to gain a renewal is subject to the possibility of limitations being placed on their license. The Department must inform the Board of their intended action. The board must act to either approve or disapprove the action within 30 days or the limitations become effective.
4. Renewal is the responsibility of the licensee. Be sure to notify the Department of any address changes. The application is sent to the last known address. There is a Possible disciplinary action for failure to notify.

339.205 The Department can create rules to help them implement these written laws.

339.206

1. The Department and the Board approve the content of the test to qualify.
2. The Department has the responsibility to administer the test, but it can delegate this to an outside source, which is now PSI Examination Services.

339.207

1. The Board must recommend to approve a school to provide training in the construction (covered in Section 313 and 314).
2. Including Continued Education.
3. and 4. The Department and Board have 90 days to first recommend and then approve an applicant to provide education services.

339.208 The Department keeps the files of the Board and makes them open to the public.

339.209

1. The Department provides the administrative services needed to implement the actions of the board.
2. The Department appoints the administrative staff.
3. The Department can hire, fire, promote, demote or transfer staff members.

339.210 The Department can outsource needed services.

339.211 The Department must provide an orientation for new board members.

339.212 The Department must provide an annual report to the governor and the legislature describing the activities of the department and its agencies.

339.213 (Temporary Licenses)

There are no temporary licenses issued in the construction industry. The section of the law pertains to several industries. There are some exceptions to these laws within each industry.

339.214 If a license being applied for requires proof of the proper education or experience and that proof is unavailable from the foreign country, it is possible to qualify by:

1. A sworn statement provided by the applicant of this education or experience.
2. A governmental official's sworn statement of the unavailability of these records.

Article #3

339.301 The Residential Builders and Maintenance and Alteration Contractors Board shall contain 9 total members. 6 of them must hold a license as a builder or a maintenance and alteration contractor. 3 of them must be from the general public.

The director is a member by virtue of the position, but cannot be counted as a member to fulfill the number of members needed to constitute a quorum.

NOTE: quorum means the number of members needed to take action as a board. 5 members constitute a quorum.

Board members must be at least 18 years old and be a Michigan resident.

339.302 Governor appoints board members with advice or consent of the senate.

339.303 The term of the board members is 4 years. The maximum number of terms is 2.

339.303A Board member terms start on April 1st.

339.304 Reimbursement for expenses incurred by the board will be on a fixed per diem basis which will be set annually and payable by the Department.

339.305

1. The Board meets as often as necessary to fulfill its duties, but it must meet at least 2 times a year. Other dates are set by the director.
2. Files of the board are available to the public.

339.306

1. The board elects a chairperson and a vice chairman each year. The Board can fill a vacancy in the board for the balance of a 1 year term.
2. The Board can adopt bylaws to help it regulate its internal affairs.
3. The Board shall provide an annual report to the Department of its activities, or upon an order from the director.

339.307

1. The Board shall be created within the department.
2. The Board's duties include interpretation of these laws, the ability to investigate a complaint and to provide support to the Department.

Board members, if interested, can attend an informal conference being conducted by the Department.

339.308 The Board shall create and make known its rules that are necessary to fulfill its duties.

The Board can create and make known its rules that set the minimum standards for acceptable practice.

339.309 The Board disciplines and issues penalties within the limitations of Article 6.

339.310 The Board will help the department interpret these laws in order to determine whether or not an applicant has met the requirement for licensure or renewal.

339.313

1. The Board recommends educational course providers to the Department.
2. Before the Board recommends an educational course provider, they must decide that the provider is competent.

339.314 The Board recommends the approval of Continued Education programs to the Department.

339.315 If an educational course provider is denied a license, they can protest that decision and be granted an opportunity for a review.

339.316

1. The Board develops or adopts the test required by these laws to qualify for licensure.
2. Questions developed by the Board are closed to the public.
3. The qualification standards must provide for persons with special needs or a unique qualification that could not be made evident through a written exam.

Example: A person with a reading disability can request a reader for the exam.

Example: A person not able to pass the written test can request an oral test in order to prove their qualifications.

339.317

1. The Board that has been abolished must provide all files to the Department.
2. The successor board shall have the right to use the equipment and office space of the previous board.

Articles 4-6
Rules and Regulations

339.401 Provides the right to charge a fee for licensure and registrations.

339.402 Review the definitions.

339.403

1. Companies under contract to provide services to administer these laws can collect fees.
Example: PSI collects its fee to provide the qualifying test.
2. If the Department terminates a contracted service provider to provide the service in-house, the fee cannot change without an official action taken under the Licensing Fee Act.

339.405 All fees are non-refundable.

339.407

1. Fee must be paid before an exam is given.
2. Examination no-shows forfeit the exam fee.
3. People who fail can retake the exam after paying another fee.
4. The Department must provide the deadlines in which applications must be received in order to be scheduled for an exam.

NOTE: with the current provider "PSI" the test is given every week of the year.

339.409

1. License fees must be received in order for a license to be issued.
2. License fees are established on an annual basis but may be collected on a bi-annual or tri-annual basis.
3. If the Department receives an application that is unable to process because it is incomplete, the Department will send a notice of an incomplete application. The application will expire after one year.

339.411

1. If you let your license expire, you are unlicensed on the day following the expiration date. No business can be conducted after that date.
2. If you wish to renew a license that has expired within 60 days of the expiration date, you must pay a late renewal fee of \$20, plus the license fee.
3. A person who lets their license expire for more than 60 days must reapply. They won't have to retest or take additional courses if:
 - A. Their license has not be expired for more than 3 years
 - B. They pay the required fees.
 - C. They pay any penalties that were previously imposed by the state.
 - D. The person completes at least 1 year of required Continued Education within the last 12 months.
4. After 3 years of expiration, the applicant must re-qualify by passing the test and possibly taking Continued Education or the entire 60 hour pre-licensure requirement.
5. This section addresses reinstatement of a license. Reinstatement happens when the licensee has had their license revoked.

The applicant must file a reinstatement application and pay the fee. File a petition to the Department and the board giving reasons why they should reinstate the license including evidence

that no harm will come to the public through this reinstatement. If approved, the person shall pay the per-year licensing fee, plus any requirement set by the board.

6. The Department has 90 days to issue a license after receiving a completed application. If they receive an incomplete application, they must notify the applicant with 30 days. The Department has 90 days to complete the application from the date it is considered a completed application.
7. Not applicable
8. If the Department fails to complete an application within the time limits, the Department shall return the application fee and give a 15% break on the next renewal fee.
9. The director provides an annual report to the senate and house of representatives including:
 - A. The number of initial and renewal applicants within the previous 90 days
 - B. The number of applicants denied
 - C. The number of applicants who were not issued a license within the required time period, and the amount of money that was returned.
10. This subsection states that the information in Subsection (6) doesn't apply to builders, M&A contractors or salespeople.

This is the subsection that determines that they have 90 days to complete an application. Without the time limit, they won't have to refund your application fee as provided under Subsection 8 (easy come, easy go).
11. Persons on active duty in the military that are in a combat zone are temporarily exempt from renewal license fees, Continuing Education requirements or any other requirements. The licensee must inform the department of this status. This exemption is valid until 90 days after release from the active duty, but shall not exceed 36 months from the date of the expiration of the license.
12. Completed application means:
 - The application form is complete
 - The proof of required pre-licensure education is included
 - The license fee is included

NOTE: The Department will send to the applicant the approval to take the qualifying exam with PSI after they receive and review the application.

Article 5

339.501 Any entity or person may file a complaint to the Department for an alleged violation of these laws.

339.501A Review definitions.

339.502 Upon receipt of a complaint, the Department will begin its investigation and start a file. They will acknowledge the complaint within 15 days of its receipt to the person who filed the complaint. If the department made the complaint, the director will appoint a person within the Department to act as the person making the complaint.

339.503 The Department can request that the Attorney General petition the circuit court to issue a subpoena to appear and to produce books, papers or documents.

339.504

1. Within 30 days of receipt of the complaint, the Investigative Unit will make a report to the director. The director can approve extensions:
2. If the investigation does not disclose a violation, the complaint shall be closed. The person filing the complaint will be notified of their finding.
3. If the investigation uncovers a violation, the Department or Attorney General will take appropriate action which may include:
 - A. Formal complaint
 - B. A cease and desist order
 - C. Notice of a suspension
 - D. A citation
4. At any time, the Department may bring together the complainant and the respondent for an informal conference in an attempt to resolve the issue.

339.505

1. The Department can summarily suspend a license after an investigation has uncovered a violation that provides evidence that the general public is at risk under this licensee.

NOTE: Summarily means to take action without a formal hearing.

2. A person who has had their license suspended can petition the department to dissolve the suspension order. The Department shall immediately schedule a hearing to decide this issue.
3. An administrative law examiner will grant the relief of a suspension order unless there is sufficient evidence that a threat to the public remains.
4. These records will be come part of the records in the complaint file.

339.506 After an investigation, the director can issue cease and desist orders.

A person ordered to cease and desist is entitled to request a hearing if the request is filed within 30 days of the effective date on the order.

If a person violates a cease and desist order, the Department of the Attorney General may apply in the circuit court to restrain and enjoin. This would allow the local to make an arrest.

339.507 If a licensee were to have an action taken against him such as a Summary Suspension, cease and desist or injunctive relief, further actions will be taken. Possible actions can include an informal conference, criminal prosecution, revocation and so on.

339.508

1. After the investigation, the Department will serve both the complaint and the respondent with the formal complaint. The respondent will be offered a choice of the following:
 - A. To meet with the Department and negotiate a settlement (information conference).

- B. An opportunity to demonstrate compliance (prove they are innocent of the allegations) prior to a formal hearing.
 - C. To proceed to a formal hearing.
2. The respondent must choose one of these options within 15 days or the Department shall proceed to a formal hearing, essentially making the choice for you.
 3. A member of the Board may attend an informal conference. A settlement at an informal conference could include the revocation, suspension or limitation of a license; censure; probation, restriction or penalty provided under Article 6.

The Board can reject this settlement and require a formal hearing.

4. The Department may be represented by an employee of the Department in a formal hearing.

339.510 The respondent will be given the opportunity to prove that they have broken no law, rule or order.

339.511 If there is not an informal conference, or if the informal conference does not result in a settlement, a formal hearing will be held. A board member may attend a hearing.

339.512 Subpoenas can be issued to require a person to appear and testify or to produce relevant documents.

339.513

1. After the hearing, the administrative law examiner will submit a hearing report to the department, Attorney General and the Board. The hearing report may recommend the board to assess the penalties.
2. The claimant and respondent will receive a copy of the hearing report.
3. Board members who have participated in an investigation or who have attended an informal conference shall not participate in the finding of fact in relation to a complaint.

339.514

1. After receiving the hearing report, the Board has 60 days to determine the penalties.
2. If the board fails to determine the appropriate penalty with 60 days, the director may determine the penalty and issue a final order.
3. The board members who have participated in the investigation or who have attended an informal conference may not participate in making a final determination.

339.515 If a person is denied a license or renewal of a license, they have the right to a review if requested.

339.516 The request for a review must be written and provide a reason why they should be permitted to hold a license.

339.517 If a person has been unable to receive a license because they haven't passed the test, the Department may administer an alternative form of testing. (Possibly provide a reader or an oral test).

339.518 The Department may issue a license to persons who are determined to be competent by use of alternative methods.

339.519

1. If a license is issued with limitations place on it, the licensee can petition for a review of the decision to place the limitations within the first 30 days of receiving the limited license.
2. The Department shall reply to this petition in writing within 15 days.
3. The Department and board may remove limitations if the petitioner is found to be competent in all functions of an occupation.

339.520 Schools, institutions, programs or persons who have been denied a license may also petition for a review within 30 days.

339.521 Upon receiving a petition from a school, institution, program or person who has been denied a license, the department may reinvestigate the school, institution, program or person. A reply will be provided.

339.522 No Applicable

339.551 Review Definitions

339.553

1. If an employee of the Department observes or deduces from an investigation non-compliance with a law or rule, they can issue a citation.
2. Citations may come by Certified Mail, Return Receipt Requested or delivered in person. Citations contain:
 - A. Date of citation
 - B. Name and title of person issuing it
 - C. Name and address of the respondent, indicating that the citing is a result of a violation of the law
 - D. A brief description of the alleged violation
 - E. Possible penalties if found guilty
 - F. Signature line for receipt of citation
 - G. A space for the respondent to agree to comply or to contest the citation
 - H. Notice that the respondent has 30 days to either accept or reject the terms of citations

- I. Brief description of hearing process and the process for settlement through an informal conference.

339.555

1. Respondent has 30 days to notify of either accepting or rejecting the conditions of the citation.
2. If the respondent accepts the citation, within 30 days of receiving it, they can pay the required fine and provide any other material requested. The citation and accompanying material will be placed in the person's records. The records will indicate acceptance of the conditions imposed. The citation will have the same force and effect as a final order imposed by the board. The information may be disclosed to the public.
If after 5 years no further disciplinary actions are placed upon a person's record, the past disciplinary action and all accompanying material will be removed.
If a respondent chooses to, a 1-page explanation can be prepared. The department will disclose it along with the disclosure of the citation.
3. If the respondent does not admit to the allegations in the citation, returning it within 30 days to the department, the process initiated in previous Section 508 will be invoked. The citation itself will serve as a formal complaint.

339.557

Signing the citation that you received is NOT an admission of guilt.

339.559 Not Applicable

Article 6

1. A person will not engage or attempt to engage in contracting in construction activities without being licensed.
2. Schools must be licensed
3. Suspended, revoked or lapsed licenses are considered unlicensed.
4. Not applicable to residential builders or M&A contractors.
5. Not applicable to residential builders or M&A contractors.
6. Residential builders and M&A contractors who engage or attempt to engage in contracts without being licensed . . .
 . . . (1st offense) commits a misdemeanor punishable by a fine of not less than \$5000, not more than \$25,000 or 1 year jail time or both.
 . . . (2nd offense) same as above, but could spend 2 years in jail, or both.
 (In the event that a serious injury or death occurs the offense will become a felony with fine from \$5,000 to \$25,000 and 4 years in jail.)
7. A violation of this act requires that if the complainant has suffered a financial loss, restitution must be made based upon the facts found.

8. An affected person who is successful in having a judge place an injunction against an unlicensed contractor will be entitled to be reimbursed by the respondent for actual costs and attorney fees.
9. This Act is not applicable to:
 - A. Interior Designers
 - B. Building Designers
10. An "affected person" is a person directly affected by a person suspected of unlicensed business activities. An affected person could be any of the following
 - A. A licensee
 - B. The Board
 - C. The Department
 - D. A customer
 - E. A private association
11. The Director or Board can order an investigation of the offense.
12. The Department and the Department of Attorney General can seize property determined to be proceeds of the crime.
13. A person can take all lawful measures in order to correct a wrong that has been done to them. Contractors can be prosecuted for the same offense in a separate crime.
14. Not Applicable
15. Courts must notify the department of convictions by mail, fax or email.

339.601A Not Applicable

339.602 Possible penalties for violating an Act, rule or order. Penalties can be 1 or more.

- A. Limitations placed on license
- B. Suspension
- C. Denial of a license or renewal of a license
- D. Revocation
- E. Except as mentioned earlier in the fine for engaging in business without a license, the maximum fine is \$10,000
- F. Censure
- G. Probation
- H. Restitution

339.603 The Department can suspend a person's license until a required restitution is made.

339.604 Violations

- A. Fraud or deceit in obtaining a license
- B. Fraud or deceit in practicing
- C. Violation of a rule
- D. Lack of moral character
- E. Gross negligence
- F. False advertising
- G. Incompetence
- H. A violation of any provision or rule in this Act for which a penalty is not prescribed

- I. Non-compliance with a subpoena
- J. Failure to respond to a citation
- K. Failure to comply with a final order issued by the board
- L. Aids or abets another person in an unlicensed practice

339.605

1. The Department may bring an action including mediation or other dispute resolution in the name of the people of the state.
2. The Attorney General can intervene in and prosecute all cases if necessary.
3. The Department can bring any civil, criminal or administrative action to enforce Section 601.
4. The Department can bring an action either administratively or in a competent court regarding unlicensed practices.

339.606

The Department, Attorney General or county prosecutor may have property seized that are determined to be proceeds of a crime.

Article 24 Review Definitions

339.2402 This law amends 339.301

The amendment provides that of the 9 members of the Board:

- 4 shall be residential builders
- 2 shall be M&A contractors
- 1 must be a building inspector as well as a member of the general public
- 2 must be of the general public

Totals are still 6 contractors, 3 from the general public.

339.2403 Persons excused from having to be licensed to build are:

- A. An agent of the government
- B. An owner for their own use
- C. A rental property owner for maintenance and alteration of their rental property
- D. An officer of the court
- E. A person who contracts solely with residential contractors or M&A contractors, except salespeople
- F. When the amount of work to be done is \$600 or less. It is against the law to break an agreement into several small contracts to evade this law.
- G. Electrical contractors are licensed under a separate law
- H. Plumbing contractor are licensed under a separate law
- I. HVAC contractors are licensed under a separate law

339.2404 Qualifying for an M&A License

1. The department may require the below information from the following: any applicant, licensee, partner, trustee, director, officer member or shareholder of a business applying for a license:
 - A. Copy of drivers license or Michigan I.D.
2. Applicant has to pass an exam

3. Department issues a license to provide 1 of 14 crafts and trades:

- Carpentry
- Concrete
- Swimming pool installation
- Basement waterproofing
- Excavation
- Insulation work
- Masonry
- Painting and decorating
- Roofing
- Siding and gutters
- Screen or storm sash installation
- Tile and marble
- Housewrecking

Specialty contractors can provide services under a skill they are not specifically licensed for if the work is incidental and supplemental to the work they are licensed for.

These services do not require a license:

- Drywall
- Fences
- Awnings
- Sewer and septic
- Water lines, sprinklers
- Paver without mortar
- Asphalt paving
- House moving
- Carpeting and vinyl (not wood)
- Plaster and lath

4. Residential builders and M&A contractors must maintain a place of business in Michigan. If they maintain more than 1 office, a branch office license shall be obtained for each office (this requires another license fee).
5. The license term is a 3 year cycle. The renewal application must include a statement by the applicant that they have a current copy of the Michigan Residential Codes.
6. A licensee must keep records for at least 5 years of Continued Education requirement activities.

339.2404A _A contractor must provide their license number on all of their contracts.

339.2404B

1. Persons applying for a residential builders license or M&A contractor license must complete 60 hours of study to qualify including 6 hours in:
 - A. Business Management, Estimating and Job Costing
 - B. Design and Building Science
 - C. Contracts, Liability and Risk Management
 - D. Marketing and Sales
 - E. Project Management
 - F. Michigan Residential Codes
 - G. Safety Standard MIOSHA
2. Continuing Education requirements are as follows:

For the first 6 years of licensure a person must complete 21 hours of Continued Education with the 3-year cycle.

A person must complete at least 3 hours in any calendar year.

At least 3 hours must be devoted to Building Codes and Laws, Safety and Changes in Construction and Business Management Laws.

Persons who have held their license for 6 year or more without a violation shall complete 3 hours of Continued Education within the 3 year license cycle.

- 1 hour of codes
- 1 hour of safety
- 1 hour of legal issues

3. Licensees who have had a violation have to complete the 21 hour requirement.
4. A licensee can take any course that has been approved by the Department to fulfill the Continued Education requirement.
5. It is up to the Department to qualify the instructor for Continued Education.
6. The subject matter for pre-licensure and Continued Education may be offered by a high school, intermediate school district, community college, university, Bureau of Construction Codes, MIOSHA, trade association or a proprietary school licensed by the Department.
7. The Department shall create rules to provide for:
 - A. Determining that a course meets minimum criteria
 - B. Acceptable distance learning
 - C. Alternative forms of continuing competency such as comprehensive testing, mentoring programs, participation in code hearings held by the International Code Council, etc.
8. Teaching Continued Education counts toward time requirements.
9. The Department may conduct an audit to determine compliance with Continued Education requirements.
10. A licensee can apply for an Inactive Status temporarily suspending activities authorized by their license. The license shall be considered inactive by the Department. A person whose license is inactive will not have to take Continued Education courses, but they will have to pay the per-year license fee. They can reactivate their license by submitting an application.

339.2405

1. Corporations, Limited Liability Companies, Partnership and associations must designate a person to fulfill all qualifying requirements of licensure.

The company and the qualifying person must each hold licenses.

Exception: sole proprietorships purchase only one license.

The qualifying officer is responsible for making sure laws are upheld within that company.

2. If the qualifying officer's license gets suspended, the company's license is also suspended, and vice versa.
3. If one license is suspended or revoked, all licenses are suspended or revoked under this Article. For example, if an M&A contractor holds a license in roofing and carpentry, if they lose one, they lose both.
4. If a company loses their qualifying officer, the company's license is suspended.
If requested, the Department may allow the company's license to remain in force for a reasonable time in order to get a new qualifying officer.

339.2406 Non-resident can become licensed in Michigan.

Foreign corporations must become authorized through the Corporation and Securities Commission in order to do business in Michigan.

Irrevocable Consent to Service of Process means the qualifying person is subjecting them self to Michigan Law and the possible penalties of Michigan Law even though they reside in another state. This is done by appointing the director of the Department as their legal attorney with which all legal processes will be served. This allows the state to take action against non-residents without their presence.

BCSNCL-900 (8/07)
 Michigan Department of Labor & Economic Growth
 Bureau of Commercial Services
 Licensing Division
 P.O. Box 30015, Lansing, MI 48909
 www.michigan.gov/commerciallicensing
 517-241-9288; Fax 517-373-3085

CONSENT TO SERVICE OF PROCESS

AUTHORITY: P.A. 299 of 1980, as amended
 COMPLETION: Mandatory
 PENALTY: Failure to complete may result in denial of your application.

Information provided on this form may be released to the public in accordance with the Freedom of Information Act, 1976 PA 442, as amended.

Name of Applicant	License, Registration or Listing applying for (builder, real estate, etc.)		
Street Address	City	State	Zip Code
Type of Application (check one) <input type="checkbox"/> Individual <input type="checkbox"/> Organization (corporation, limited liability company, partnership, etc.)	If Applicant is an Organization, Name the State in which you are organized.		

KNOW ALL PERSONS BY THESE PRESENTS:

For the purpose of complying with the laws of the State of Michigan, the undersigned irrevocably appoints the Director of the Licensing Division, Bureau of Commercial Services in the Michigan Department of Labor & Economic Growth, or his/her successor in office, to be his/her/its attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against him/her/it, or his/her/its successor, executor, or administrator, which may arise under the Occupational Code (being Act number 299 of the Public Acts of 1980, as amended) or any rule or order thereunder after the filing hereof. The undersigned does hereby consent that any such action, or proceeding against him/her/it may be commenced in any court of competent jurisdiction and proper venue within the State of Michigan by service of process upon said Director with the same force and validity as if served upon the undersigned by service personally on its president or other chief officer, if a corporation, or on one of its partners, if a partnership, or on one of its members, if a limited liability company, or on the individual, if an individual.

Signed in the City of _____, State of _____

this _____ day of _____, 20____. Signed _____
Name of Applicant

By _____
if an Organization

Title _____

State of _____

County of _____

Subscribed and sworn before me this _____ day of _____, 20____

Signature of Notary Public _____

My commission expires _____ County of _____ State of _____

If a Corporation, execute and attach a resolution authorizing Consent to Service of Process.

The Department of Labor & Economic Growth will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability or political beliefs. If you need assistance with reading, writing hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

339.2407

1. Salespeople can only work for one company. If the salesperson changes companies, they have to return the original license and apply for a new one under the new company.
2. Employers make the applications for a salespersons license.

339.2409

1. Change of name or address must be reported within 30 days. This includes individual officers if a company is a corporation, partnership or association.

339.2410 Licensees do not have to retake the test to renew their license.

339.2411

1. Persons making complaints against M&A contractors must do so within 18 months of whichever of the following occur LAST:
 - Completion
 - Occupancy
 - Purchase
 - Occupancy Permit
 - Closing
2. The following are violations of the law:
 - A. To abandon a construction project without legal excuse
 - B. To divert funds from a project. Funds must be used for contract intended.
 - C. To fail to account for monies received
 - D. To fail to build as specified in prints, plans and specs
 - E. To knowingly violate building laws and codes
 - F. To fail to furnish a signed completion certificate to the lender
 - G. To fail to inform State of Michigan of change of ownership, direction or officers within 10 days.
 - H. To fail to provide to the purchaser any documents that pertain to the overall cost of the project. For example, Change Orders.
 - I. To fail to turn over money that is collected from clients while working as a salesperson.
 - J. To let someone else work under your license
 - K. For salespeople to accept money or work for unlicensed companies.
 - L. To dissolve a company without meeting all financial obligations.
 - M. To not meet minimum building code standards.
3. If companies knowingly violate the Asbestos Abatement Contractors Licensing Act, their license may be suspended or revoked.
4. The following applies to workmanship
 - A. Complaints by homeowners made to the Department shall be factual and in writing. A copy must be provided to the contractor.
 - B. Licensees are innocent until proven guilty. Licensees have to defend themselves and give proof and reasons for not satisfying the customer.
 - C. The Department will order an inspection to verify a complaint. If the Department verifies the complaint, the licensee will receive a copy within 30 days of the Department receiving the inspector's report. The Department can summarily suspend a license without the inspector's report if they feel it is necessary.
 - D. Contractors and homeowners can agree in a contract to a specific dispute resolution or arbitration procedures. This needs to be initiated by the licensee, with notice sent to the homeowner with 30 days of an arbitration date.
 - E. Arbitration supersedes the Department taking action against the licensee, unless the licensee does not fulfill the requirements decided in the arbitration proceeding or the arbitration procedure is not fully completed within 90 days from the notice of the complaint.
 - F. The person filing the complaint must make the structure reasonably accessible to the licensee in order for them to fix the problem. The person filing the complaint must let the

licensee know the structure is accessible. If the repairs were not made within 60 days of the licensee being notified of accessibility, the homeowner has to prove it. This does not apply if the Department files a cease and desist order or an injunction.

- G. If the homeowner and licensee agree in a contract to standard of workmanship, the Department will take that under consideration.
- 5. If a licensee does not appear for a hearing, the hearing will proceed anyway and it is not likely to go in the licensee's favor if they are not there to defend themselves. By default, the person filing the complaint may receive requested relief.
- 6. A verified complaint means the allegations in the complaint have been confirmed.

339.2411A Licensees who receive final orders will have this information posted on the State of Michigan's web site for all to see.

339.2412

- 1. Contractors who are required to be licensed by law have no lawful recourse to collect funds if they are not licensed.
- 2. A person filing a complaint against a contractor who has made a contractual arbitration agreement must use that method.
- 3. Unlicensed contractors who are required to be licensed cannot take legal action or impose a lien.
- 4. A Prosecuting Attorney or Attorney General can bring action for a civil violation against a builder for operating without a license.
Fines will be not less than \$5000 or not more than \$25,000, plus any civil damages or restitution.
The fine shall be paid to the prosecuting attorney or to the Attorney General bring the action.

ADMINISTRATIVE RULES

R338.1511

Review Definitions

R338.1521

- 1. License applications must include addresses of all individuals, partners, officers or members, and the address of the office of the company.
Non-residents must sign a Service of Process as stated earlier and have a physical address in Michigan.
Foreign companies must provide a signed Consent to Service of process.
Foreign Corporations and Limited Liability companies must provide evidence of its qualification from the Corporation and Security Commission.
- 2. Applicants must provide the proper documentation verifying their method of legally organizing as a company, including:
 - A. Copy of Assumed Name Certificate issued by the County Clerk (sole proprietorships).
 - B. Copy of current filed Certificate of Co-partnership used by the County Clerk (partnerships).
 - C. Copy of the filed Articles of Organization, Certificate of Assumed Name (if applicable) and Current Certificate of Good Standing (limited liability companies).
 - D. Copy of the Articles of Incorporation, Certificate of Assumed Name (if applicable) and current Certificate of Good Standing (corporations).
 - E. Any other documentation requests.

3. Foreign companies must submit evidence of authority to do business (Corporation and Securities Commission).
4. For a Michigan corporation that is wholly owned by a foreign corporation that isn't authorized to do business in Michigan, the parent company must sign an affidavit that subjects their actions to the jurisdiction of Michigan's laws. The director of the Department shall receive Service of Process and forward a copy to the parent company.
5. If requested, the applicant shall submit a credit report.
6. If requested, the applicant shall submit the following within 60 days:
 - A. Cash Surety Bond
 - B. Financial Statement
7. If an applicant within 1 year of submitting an application does not provide an application that is considered complete, the application received will expire and the fee forfeited.
8. M&A contractors who are applying for a license to add additional skills must:
 - A. Pass the appropriate exam
 - B. Submit an application to add the new skill
 - C. If requested, provide a credit report
 - D. Return old license when new one is received (both wallet and wall)
9. Passing test scores are valid for 1 year from the date the test was taken.

R338.1524

1. Upon successful completion of all requirements, the license will be issued.
2. The office address shall be printed on the license.
3. Denial is possible if the Department believes it has good and sufficient cause. Notice shall be sent giving the applicant the opportunity for a review.

R338.1525

1. Salespeople shall be licensed under builders or M&A contractors. They can only work under 1 contractor at a time.
2. Applications for salespeople are submitted by the employer. If an applicant for a salesperson holds a builder license or M&A contractor license, they won't be required to take the test to qualify as a salesperson.
3. Salespeople shall be issued a license upon approval. Salespeople shall not begin selling until they receive their license.
4. The builder or M&A contractor are responsible for returning the wall license to the Department via Certified Mail within 5 days upon termination of employment of a salesperson. Salespeople are responsible for the return of the wallet license with the same conditions mentioned above.
5. Salespeople who transfer to a new business can have their new employer apply for a transfer of license.

R338.1526

1. A licensee who has been required to be bonded must not cancel the bond. If the bond is canceled, the license is suspended on that date.
2. If a license is suspended or revoked, the licensee shall return it to the Department within 10 days. Salespeople will return their license upon expiration, but their licenses are terminated while their employer's license is suspended or revoked.
3. If the qualifying officer is the qualifying officer for more than one company, and the qualifying officer is party to an offence that causes a suspension for one of these companies, the license of the other companies will also be suspended.

4. If a qualifying officer leaves a company, they have 10 days to notify the Department in writing. They must also return the wall and wallet licenses.
5. If a company loses their qualifying officer, they must submit a written request to allow the company time to obtain a new qualifier in order to continue operating.

Part 3

Operations of Licenses

R338.1531

1. Residential contractors must have an address of an actual office in Michigan where their business records are kept.
2. All business licenses shall be displayed in a conspicuous place in the office.

R338.1532

1. No false advertising
2. Advertising must include business name, address and license number. If a builder hires a real estate broker to sell his home, the advertisement does not have to include the name of the builder.
3. Builders cannot solicit any contract by promising a purchaser a bonus of any kind which requires the purchaser to use or display their property to other prospective customers.
4. The use of displays, models or model installations shall portray the goods accurately so as not to be deceiving.

R338.1533

1. All agreements or changes to the agreements shall be in writing and signed by both parties with copies provided to the customer.
2. Written agreements shall provide the following:
 - A. Clear terms
 - B. Specifications and plans (if applicable)
 - C. Cost
 - D. Type and amount of work to be done
 - E. Type and quality of material to be used
3. If the purchase is a new home and it is substantially completed, or the purchase is based on a model they can walk through, plans and specifications do not have to be provided, but any changes need to be identified in writing.

R338.1534 Companies must maintain accurate and complete books and records at their place of business. They must make them accessible to the Department upon request. This requires reasonable notice and stated reason.

R338.1535 Department may require, upon notice, a current Sworn Financial Statement. The licensee shall submit one within 30 days. Request for an extension of time may be granted for good cause.

R338.1536 It is against the law for a company to perform under or accept a contract that was procured by an unlicensed salesperson.

Part 5
Complaints and Hearings

R338.1551

1. Complaints shall be submitted on the specified form.
2. Complaints shall be assigned a number and the licensee shall receive a copy. The licensee shall respond to a notice of a complaint within 15 days of receipt. If the contractor acknowledges the complaint as justified, they shall correct the complaint within a reasonable time. If the contractor does not acknowledge the complaint as justified, the Department will respond to the complainant in the area of disagreement.
3. The Department will require that the information provided in the complaint is complete. The Department may have the local building department investigate and make a report of their findings. It is also possible that a department official would investigate the matter to determine if the complaint is justified.
4. If the complaint is determined to be justified, the contractor shall correct the problem in a reasonable time. Failure to correct a problem that is considered to be dangerous to the customer will be presumed to be dishonest and unfair dealing.
5. Standard of Construction shall be in accordance with Michigan Residential Code 2006.

R338.1552 The Department, after an investigation, may request the licensee appear for an investigative hearing to determine if there is cause for a hearing or possible dismissal of a complaint. Notice of request for the conference is sent 10 days in advance. Failure to appear can be a basis for a suspension, revocation or denial of a license.

It is possible to have the conference rescheduled if a request is made at least 5 days before the meeting date.

R338.1553

1. If a contractor and a complainant resolve their dispute before the conference, the contractor must notify the Department in writing. The department will verify this with the complainant. This does not mean that the Department won't take disciplinary action involving the issue.
2. The Department can dismiss a complaint if it is resolved, settled, without merit or for lack of evidence of a violation.
3. After an investigation, the Department can recommend to the Director that a hearing be held, giving the contractor an opportunity to provide reasons why they should not suspend or revoke a license.

R338.1555 As of August 1, 2001, people who have agreed to arbitration as a method to resolve their disputes under contract must utilize that method.

NOTE: If a contractor fails to comply with the provision in an arbitration agreement, the Department will then take action.

**Department of Labor and Economic Growth
Occupational Boards**

R339.1001 Review Definitions

R339.1002 Not Applicable

R339.1003 Residential Builders and Maintenance and Alternation Contractor licenses shall expire on May 31. The license will expire every 3 years.

**Part 7
Disciplinary Proceedings**

R339.1701 Review Definitions

R339.1703 Procedures involving the processes involved in handling complaint proceedings must be done in accordance with Michigan law.

R339.1705

1. If a contractor has broken a law before they become licensed, the Department can take action on the offense.
2. A licensee whose license has expired, lapsed or been revoked, suspended or surrendered will be subject to the regulations provided under Article 5 and 6 until the latest of these periods.
 - A. 7 years after the license status changed.
 - B. 3 years after all complaints have been closed
 - C. Until the licensee is in full compliance with all final orders issued.

R339.1706

1. A change of address must be made within 30 days of the change.
2. Even if you no longer hold a license, you must still report a change of address until the latest of these periods:
 - A. 7 years after the license status changed.
 - B. 3 years after all complaints have been closed
 - C. Until the licensee is in full compliance with all final orders issued.

R339.1709 If a contractor has violated a law in the past, and the laws have since changed, the actions taken by the Department will reflect the laws that were in effect at the time of the offense.

R339.1713 Time limits work like this:

- You receive a Certified Letter from the Department and you sign for it on Monday.
- The letter states that you have 15 days to reply.
- The first day of the 15 days is Tuesday.
- If the 15th day falls on a Saturday, Sunday or legal holiday, the 15th day is the next business day after the Saturday, Sunday or legal holiday.

R339.1721

1. The Department may combine several complaints against a contractor into one formal complaint.
2. The Department can withdraw a complaint at any time.

R339.1726

1. There is no rule that prohibits the parties involved in a complaint from attempting to settle their dispute on their own.
2. Settlement proposals shall be signed by all parties and submitted to the board for acceptance. The board may either accept or reject the proposal. If it is rejected, a hearing will be held.

R339.1731

1. It is possible for a contractor to request that a written statement from them be accepted instead of them being present at an informal conference.
2. Informal conferences held by the Department are held for the purpose of dispute resolution, not to collect evidence.
3. The Department can decide to adjourn an informal conference for good cause. (Adjourn means to suspend until another time.)
4. The department decides if a case should go to a hearing.

R339.1741

1. Contractors can respond to a formal complaint with a letter.
2. Formal complaints can be changed. If a formal complaint is changed, more time may be given to the contractor to prepare a defense.

R339.1743 through R339.1771 These are the actual procedural rules leading up to and during a contested case hearing. If interested, please review on your own.

This is helpful information if you find yourself in this situation, but you will not be tested on this information.

Refund of Fees

R338.943 Department shall refund fees upon its own initiative or if they receive a request made within one year of fee validation for reasons of

- A. Duplicate payment
- B. Making payment when none is requested
- C. Overpayment
- D. Renewal fees if the licensee dies or is expected to die before the first day of the new license period. Copy of a death certificate or a statement from a doctor is required.

R338.944 Not Applicable

**State License Fee Act
P.A. 152 of 1979**

338.2202 Review Definitions

338.2203

1. The fees shall be used to pay only for the cost of operating the Department

2. With the exception of Sections 37, 38 and 51, the fees shall be credited to the State's General Fund.

R338.2205

1. With the exception of Rule 338.943, fees shall not be refunded.
2. Department shall make rules concerning refunds following the laws of the state.

R338.2206 The late renewal fee is \$20.00.

R338.2207 The fee for a duplicate license is \$10.00 issued only if a statement is provided that it was lost, stolen or destroyed.

R338.2208

1. A person requesting written verification as to whether or not a contractor is licensed will pay a fee of \$5
2. Any additional written information requested about a licensee will be \$15.00

R338.2209 If a person requests written proof of the authority that the Department has under the laws of the state, they shall charge a fee of \$2.00 or the cost of the publication.

R338.2210

The Department may charge a fee of \$10.00 to correct a record such as change of address or name.

State Licensee Fee Act 152 of 1979

R338.2239

Application fee for a person licensed or seeking a license as a residential builder or M&A contractor, salesperson or branch office for the first time is \$15.00, plus the cost of the license:

Initial license fee is \$60/year for 3 years =	\$180.00
Plus the \$15 Application fee	\$195.00

During the first license cycle for the initial license or a renewal of a license, the 3-year license fee is \$180.00. After that, in the next issuance, it will be \$150 or \$50 per license year.

1. The examination service is contracted out to PSI Examination Services. The fees charged by PSI are more than what the state could charge if they administered the test themselves.

The fees provided here are the actual fees charged by PSI:

Testing for both parts of exam:	\$100.00
Business/Law and Practice/Trade	
M&A contractor exam	\$ 80.00
Business/Law and 1 Trade	
(\$10.00 extra for additional trade)	
Salesperson test	\$ 75.00

**Occupational License For Former Offenders
P.A. 381 of 1974**

The intent of this law is to help persons who have committed past offences to be able to become licensed if they have provided convincing evidence that they would deal with the public in an honest and fair manner. It also provides a lawful method for persons in this situation to contest a decision made by the Department.

338.41

1. Good moral character means when, as a requirement for licensure, the person is believed to be honest and fair.
2. N/A

338.42 A person who has been found guilty of a criminal or civil offense must be given an opportunity to present their case that they would serve the public in an honest, fair and open manner. To convince the Department that they are rehabilitated or that the substance of their prior offense is not related to the license they are seeking.

338.43

1. The following records cannot be used, examined or requested by the Board to assist them in qualifying an applicant:
 - A. Arrest records not followed by a conviction.
 - B. Records of reversed or vacated convictions.
 - C. Records of conviction unrelated to a person's likelihood to serve the public in an honest and fair manner.
 - D. Records of misdemeanor convictions with no jail time served.
2. Criminal records that are furnished to the board have to be reviewed by the Director of the Department to insure that the information meets the required criteria.
3. The Director shall create and put into effect rules for the decision making process to determine that an applicant with a criminal background will likely serve the public in an honest, fair and open manner. The rules have to be consistent with Michigan law.

338.44 The board can use all other public records or any reliable sources of information to determine the fitness of the applicant.

338.45 If a person is found to be unqualified by the Department, the Board will notify the person in writing along with a complete record of how they arrived at that decision. The person shall then be entitled to a hearing before the Board.

338.46 After the hearing, if a person is unsatisfied with the decision made by the Board, they can bring an action in Circuit Court. It is possible for a judge to order the Department to issue a license.

338.47 This Act does not limit the Department's authority to discipline licensees.

Building Contract Fund

570.151 Any monies received by contractors or subcontractors for the payment of materials or services within a contract are to be used specifically for that project and for the reasons for which they were furnished. Contract funds are considered to be a trust fund. Contractors and subcontractors are considered to be the trustees of those funds.

570.152 A contractor convicted of fraudulent use of contract funds is guilty of a felony punishable by a penalty of not less than \$100 or more than \$5000, or not less than 6 months in jail or more than 3 years in jail, or both.

570.153 If a contractor pays himself from contract funds but does not pay other entitled persons for materials or services, this will be evidence of intent to defraud.

Construction Lien Act & The Construction Lien Recovery Fund

This law was created to protect the rights of a person who provides either material or labor in the improvements of a property.

570.1101 This act shall be known as the "Construction Lien Act".

570.1103 Definitions – please review (especially Designee).

570.1107

- 1) Each contractor, subcontractor, supplier or laborer who has supplied material or labor to improve a property, has a legal right to claim that debt owed to him by filing a lien against the property improved. The amount of the lien shall not exceed the amount in the contract for the improvement.
- 2) This lien is attached against the value of the entire property.
- 3) This claim may be settled by the foreclosure (forced sale) of the property in order to acquire the liquid funds for payment. Even though the property may be mortgaged, the lien claimant can still claim what is owed to them when the property is sold.
- 4) In the case of an owner who has a land contract on their home, the claimant must have provided the notice of furnishing plus perform the actions required in the land contract which exist between the original owner and your customer within 30 days after receiving the notice of forfeiture. The notice of forfeiture is provided after a judge has decided to foreclose upon that property.
- 5) The court will presume that if a property is owned by two people they are both aware of the improvement contracted for. But if a co-owner is found by the court to having been previously unaware of the actions taken by the other owner, the judge will not act against the co-owners interest. When entering into a contract, make sure who the owners are at the county register of deeds.
- 6) When there are multiple liens against the same property, the total amount of their claims cannot exceed the amount that is proven to be still unpaid from the original contract plus any verified modifications to the original contract such as properly completed change orders.

- 7) Lien claims do also include earned interest from the time the claim is filed and for the next 90 days.

Note: Owner also includes lessee and designee

570.1108 A

- 1) An owner shall provide a complete Notice of Commencement to a contractor, subcontractor, supplier or laborer who has requested it.
- 2) The notice shall contain this information:
 - a) legal description of the property
 - b) name and address of the owner
 - c) name and address of the owner of the land contract
 - d) name and address of the designee
 - e) name and address of the general contractor, if any, and the following caption that must be right below the line that provides the G.C.'s name and address

NOTICE OF COMMENCEMENT

A NOTICE OF COMMENCEMENT announces that work is about to begin on a home building or remodeling project and provides interested parties with information needed to follow the construction lien procedures properly. The document can be requested by any of the parties involved in the building project; the written request should be sent by certified mail and must be accompanied by a blank NOTICE OF FURNISHING form. The homeowner is required to complete and return a copy of the NOTICE OF COMMENCEMENT and the blank NOTICE OF FURNISHING form to the requestor within 10 days. A copy of the Notice of Commencement should be posted at a conspicuous place at the job site.

NOTICE OF COMMENCEMENT

State of Michigan

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County of Ingham

Harry Smith being duly sworn, deposes and says:

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 the 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:

Lot 27, Grandview Acres Subdivision Okemos Michigan, Ingham County, Section 35 T5N, R10E as Recorded in Liber 69 Page 157 of Plats of Ingham County.
Sidwell #296543

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

Name: Harry Smith
Address: 1024 Main Street
Capacity: Lansing, Michigan 48901

The name and address of the fee owner of the real property if the person contracting for the improvement is a land contract or lessee, is:

Name:

Address:

The name and address of the owner's or lessee's designee is:

Name:

Address:

The name and address of the general contractor, if any is:

Name: United Builders, Inc.

Address: 152 Capitol Avenue
Lansing, Michigan 48933

WARNING TO THE 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 POSTMARK ON THE REQUEST.
2. IF YOU DO NOT COMPLETE AND RETURN THIS FORM WITHIN THE 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.

Harry Smith, Owner
(Printed Name/Signature)(name and capacity)

Prepared by:

Name: Mary Smith

Address: 1024 Main Street Lansing

Subscribed, sworn to and acknowledged before me this 5th day of April, 2005

NOTARY PUBLIC:

Linda Block
(Signature/Printed Name)

My commission expires: January 31, 2006

Ingham County, Michigan.

570.1109

- 1) Subcontractors and suppliers must provide to the designee and the general contractor, if any, the Notice of Furnishing either personally or certified mail within 20 days after first furnishing labor or materials. The date on the certified mail completes the service time limitation.
(NOTE: This timeline is critical only if the fault of non-payment is the fault of the owner and not the G.C.)
- 2) Laborers are given 30 days from the date that their wages were due to provide notice of furnishing to the designee or owner if they were under contract.
- 3) Laborers must provide notice of furnishing within the 5th day of the second month following the month that fringe benefits on withheld wages were due and not paid if they were NOT under contract.
- 4) Notice of Furnishing shall be substantially the following form.

NOTICE OF FURNISHING

A NOTICE OF FURNISHING provides proof that a supplier, subcontractor or laborer has provided labor or materials towards a construction project.

If you are a subcontractor or supplier provide the Notice of Furnishing within 20 days of the first delivery of goods or services. If you are a laborer, send your Notice of Furnishing within 30 days after wages are due. (Special provisions in the law allow later filings in case a union representative files for unpaid fringe benefits for a group of workers.) The failure of a lien claimant to provide a notice of furnishing within the time specified by law will not defeat the lien claimant's right to a construction lien, however may affect the amount you can collect on your claim.

NOTICE OF FURNISHING	
TO: <u>William F. Swan (Owner)</u>	_____
*(name of designee (or owner or lessee) from notice of commencement)	
<u>2419 Greenlake Dr.</u>	_____
(address from notice of commencement)	
<u>Clarkston, Michigan 46401</u>	_____
Please take notice that the undersigned is furnishing to <u>Standard Builders</u>	
<u>1524 Main Dr., Clarkston, Michigan</u>	
(name & address of other contracting party)	
certain labor or material for <u>Residential Structure</u>	_____
(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 <u>69</u> , on page <u>247</u> , <u>Oakland County</u>	
(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.	
<u>Acme Lumber Co., 10 First St., Clarkston, MI</u>	
(name and address of lien claimant)	
By: <u>Joseph O. Wood, Vice-President</u>	_____
(name & capacity of party signing)	
Date: <u>September 15, 2006</u>	<u>10 First Street,</u>
	<u>Clarkston, MI</u>
	(address of party signing)
*If no designee is named in the Notice of Commencement, use owner or lessee named. If no Notice of Commencement recorded or given, use name of 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.	
***Notice of Furnishing is required to be provided to the General Contractor, if any, as named in the Notice of Commencement.	

The intention of the requirement of Notice of Furnishing is to provide to the owner or other responsible agent, a list of all of the possible claimants against his property so they are aware of their responsibility. How can an owner be responsible for payment that they never knew of?

- 5) Failure to provide the Notice of Furnishings within the time limit does not stop a contractor from being able to claim the materials and labor they have supplied to projects once they have provided Notice of Furnishings. (Note: The Recovery Fund only pays out in situations where the owner paid the G.C. for subcontractors and material providers, but the G.C. diverted the funds from their rightful purpose neglecting to pay material providers and subcontractors even though the G.C. received monies for that purpose.)
- 6) If an owner pays a general contractor as stipulated in a Sworn Statement or upon receipt of a waiver for monies due to companies for work performed or materials provided, but the G.C. does not release those funds as required to the entitled participants. These companies can still exercise their claims even though they have gone past the time limit for providing Notice of Furnishings. This section does not include a laborer.
- 7) Laborers have to provide the Notice of Furnishings within their limits in order to claim a lien.
- 8) Laborers have to provide the Notice of Furnishings to collect on fringe benefits on withheld wages within the previously mentioned time limit in order to claim a lien.
- 9) 9) Failure of a laborer to provide a Notice of Furnishing to a G.C. within the previously mentioned time limits does not prevent them from a claim of lien, but the laborer may have to pay the contractor for any damages caused by this failure.
- 10) 10) A group of laborers who have claims against the same property can have one (1) Notice of Furnishing served for all of these claims. Note: the required information for each claimant must be complete.

570.1110

- 1) A contractor must provide a Sworn Statement when:
 - a) when payment is due to the contractor from the owner or when the contractor requests payment
 - b) when an owner demands to see it
- 2) Subcontractors who are claiming a lien must provide to an owner a Sworn Statement on the demand of the owner if the owner has paid disbursement funds to the G.C. and the G.C. did not release the funds properly.

SWORN STATEMENT

The **SWORN STATEMENT** is an itemized list of all individuals who have provided improvements, materials or labor and an accounting of all monies due to them. Upon receipt of the sworn statement on a residential structure, the owner, lessee or designee is required to notify each party listed on the sworn statement or to each party who provided a Notice of Furnishing, in writing, by phone or in person. If a subcontractor, supplier or laborer who is entitled to notice of the receipt of the sworn statement makes a request, the owner, lessee or designee shall provide a copy of the sworn statement to the requestor within 10 days of receiving the request.

A homeowner, upon paying the contractor, should expect him or her to pay the subcontractors, suppliers or laborers on the construction project. The Sworn Statement indicates who is owed money, the amounts, and for what supplies or work done. This gives an official record of the items for which the contractor is billing the homeowner.

Homeowners please note: If you choose to pay a subcontractor, supplier or laborer directly without obtaining a Sworn Statement you are taking a risk! Be sure to obtain one before making any payments to avoid having to pay twice if any problems should arise later.

SWORN STATEMENT

State of Michigan

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County of Wayne

Albert M. Householder, (deponent), being sworn, states the following:

Wonder Construction Company, Detroit, MI

is the (contractor)(subcontractor) for an improvement to the following real property in Wayne County, Michigan, described as follows (legal property description): Lot 94 Lakeshore Subdivision, Detroit,

Wayne County, #264-098-777 Section 98-N 10, E-2

The following is a statement of each subcontractor, 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 & Phone Number 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
Acme Lumber 123 Main St, Onetown, MI 48888 (999)123-4567	Building Supplies	\$3,500	\$1,000.00	\$2,500.00			
Smith Plumbing Co. 987 1st St Anytown, MI 49999 (999) 999-3698	Pipe & Fixtures	\$1,9000		\$1,900.00			
John Smith 654 3 rd St One, MI 47777 (999)987-6543	Carpentry	\$1,250	\$475.00	\$775.00		\$700.00	\$75.00
Brick & Masonry Co. 555 One St Town, MI 41111 (999) 654-3210	Masonry	\$3,000	\$1,500.00	\$1,500.00		\$7,50.00	\$12,750.00
Totals		\$9,650	\$2,975.00	\$6,675.00		\$1,450.00	\$12,825.00

(Some columns may not be 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 at the (contractor)(subcontractor) or as Agent 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, OR 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 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.

ALBERT M. HOUSEBUILDER

Dependent Printed Name

ALBERT M. HOUSEBUILDER

Dependent Signature

WARNING TO DEPENDENT: 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 this

2nd day of July, 2006

Henrietta Johnson

Notary Public, Wayne County, Michigan

My Commission Expires:

December 31, 2008

*Materials furnished by a contractor or a subcontractor out of his or her own inventory, and which has not been purchased specifically for the purpose of performing the contract, need not be listed.

- 3) Subcontractors will provide a Sworn Statement to the contractor when payment is due to the subcontractor or when a subcontractor request payment.
- 4) A Sworn Statement shall list all of the subcontractors or suppliers that are contracted with. The intention behind the requirements of the Sworn Statement is to provide the needed information to the parties that are responsible for the disbursement of project funds so they can make sure their responsibilities are carried out.
- 5) Contractors or subcontractors are not required to list materials or cost of materials provided out of their inventories on the Sworn Statement.

- 6) Owners and designees shall give notice in writing, by phone or personally, of their receipt of a Sworn Statement to all contractors and material providers who provided Notice of Furnishings.
- 7) If an owner decides to take over the responsibility of disbursement of funds to the suppliers or labor providers, the owner can, within 5 business days, give notice to the G.C. This would typically happen if the owner gets wind of the G.C. experiencing financial difficulty. The G.C. may be listed in the Sworn Statement as a company expecting payment. The owner can withhold the G.C.'s payment until last to help insure that the other companies listed on the Sworn Statement get paid. The owner is concerned that maybe some of the money from his project might have been misappropriated to a past project of the GC's that is not associated with his project. So all of the funds that were once fully available are no longer.
- 8) If the Notice of Furnishings is required in order to claim a lien, a Sworn Statement can be prepared that represents that all who were eligible were paid.
- 9) Contractors who are required to provide a Sworn Statement to an owner may still validate the lien, but no defenseable actions can be taken by the contractor such as a complaint, cross claim or counter claim, as well as, no payment can be received until the Sworn Statement is provided.
- 10) If an owner demands a Sworn Statement from a subcontractor and the subcontractor fails to provide it, the claim is valid. However, no defenseable actions can be taken by the subcontractor until it is provided.

If a person intentionally provides false information on a Sworn Statement, they are guilty of a crime as follows.

- a) If the Statement is fraudulent in an amount less than \$200, the crime is a misdemeanor with a maximum penalty of 93 days in jail or a \$500 fine, or 3 times the statement amount whichever is greater, or both jail time and the fine.
 - b) The crimes listed below are misdemeanors with a maximum penalty of 1 year in jail or a \$2000 fine or 3 times the statement amount whichever is greater or both jail time and the fine.
 - i) The Statement is fraudulent in an amount between \$200 and \$1000.
 - ii) The Statement is fraudulent in an amount less than \$200, but they have a prior conviction under this act.
 - c) The crimes listed below are felonies with a maximum penalty of 5 years in jail or a \$10,000 fine or 3 times the statement amount whichever is greater or both jail and the fine.
 - i) The statement is fraudulent in an amount more than \$1000, but less than \$20,000.
 - ii) The statement is fraudulent in an amount more than \$200, but less than \$1000, but the person had 1 or more prior conviction under this act.
 - d) The crimes listed below are felonies with a maximum penalty of 10 years in jail or a \$15,000 fine or 3 times the statement amount or both jail time and the fine.
 - i) The statement is fraudulent in an amount more than \$20,000.
 - ii) The statement is fraudulent in an amount between \$1000 and \$20,000 and the person has at least 2 prior convictions under this act.
- 11) If there are more than 1 fraudulent Sworn Statements provided to a series of customers with similar intent, the fraudulent amount can be combined to increase the maximum penalties to higher levels. The series of crimes must be within 1 year of each other.
 - 12) If prior convictions are to be considered in accessing the penalty, the prosecuting attorney must include this information in the complaint listing these offenses. The evidence must be 1 or more of the following:

- a) a copy of the judgment conviction
- b) a prior trial transcript, plea-taking or sentencing
- c) from information in a pre-sentence report
- d) the defendant's statements

570.1111

- 1) The right to bring a lien against a property ends 90 days after:
 - a) the date the service provided was completed
 - b) the date the material was furnished
- 2) A claim of lien shall be this form:

CLAIM OF LIEN

NOTICE IS HEREBY GIVEN that on the 4th day of August, 2006, Acme Lumber Company, 123 Fourth Street, Marquette, Michigan (Name and Address of Lien Claimant)

first provided labor or material for an improvement to Lot 27 Appletree Farms Subdivision, Marquette, Marquette County, MI 49621 Sidwell #03-48-105-009, the (owner/lessee) of which is Mary P. Jones, 2410 Superior Ave., Marquette, MI 49621 (Name of Owner or Lessee from Notice of Commencement)

The last day of providing labor or material was on the 30th day of November, 2006.

Contractors, Subcontractors, or Suppliers:

The lien claimant's amount, including extras, is \$ 5,297.50. The lien claimant has received payment thereon in the total of \$ 0 and therefore claims a construction lien upon the above-described real property in the amount of \$ 5,297.50.

Laborers:

The lien claimant's hourly rate, including fringe benefits and withholding is \$. There is due and owing to or on behalf of the laborer the sum of \$ for which the laborer claims a construction lien upon the above described real property.

** Acme Lumber Company, A MI Corp (Lien Claimant) By: John Doe, Owner/President (printed name/signature/capacity) Address: 123 Fourth Street Marquette, MI 49606 Date: 11/30/2006

State of Michigan

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County of Marquette

Subscribed and sworn to before me this 30th day of November, 2006

Mary P. Harris, Notary Public, Marquette County, Michigan My Commission Expires: December 30, 2009

PREPARED BY:

Name: John Doe - Acme Lumber Co.

Address: 123 Fourth St. Marquette, MI 49602

**If the claim of lien has been assigned insert here: "The construction lien having been assigned, this claim of lien is made by as assignee thereof.

Proof of Service of Notice of Furnishing, if required by law, must be attached.

CLAIM OF LIEN

The Construction Lien Act provides legal recourse for an individual subcontractor, a group of subcontractors, laborers or suppliers who were not paid for their goods or services. A Claim of Lien should be prepared and recorded at the county Register of Deeds (Michigan County Websites, <http://www.statelocalgov.net/state-mi.cfm>) within 90 days after furnishing labor or materials for a job. The Lien will not be valid unless it is filed with the County within the specified time.

The Claim of Lien must be properly signed, dated and notarized. If the Claim of Lien is filled by a Subcontractor, Supplier or Laborer a Proof of Service of Notice of Furnishing should also be filed along with the Claim of Lien. A Proof of Service of Claim of Lien should also be prepared to prove that all parties have been properly notified.

The PROOF OF SERVICE OF NOTICE OF FURNISHING is a notarized form which verifies that the Notice of Furnishing was sent to the contractor, owner, or other responsible party. If a Claim of Lien is filed later, this document will be necessary to establish the lien rights of the plaintiff. If the Claim of Lien is filled by a Subcontractor, Supplier or Laborer a Proof of Service of Notice of Furnishing should also be filed along with the Claim of Lien.

PROOF OF SERVICE OF NOTICE OF FURNISHING		
State of Michigan		
} §		
County of <u>Kent</u>		
<u>Harry Smith</u> , a person of suitable age and discretion, as the duly authorized agent for <u>United Supply Co., a Michigan Corp.</u> being first duly sworn in accordance with the law, deposes and says:		
That on the <u>17th</u> day of <u>October</u> , A.D. <u>2006</u> he/she mailed a Notice of Furnishing (a true and exact copy of which is attached hereto) by U.S. Certified Mail and with postage fully prepaid thereon to the following person(s) with the certified number as indicated:		
Addresses/Address	Certified Number	Indicate whether Designee or Contractor
John Q. Public 210 Center Rd. Wyoming MI	B 279-425-167	Designee-owner
Albert Housebuilder 10 Main St. Grand Rapids MI	B279-425-166	General Contractor
OR		
**That on the <u>12th</u> day of <u>October</u> , A.D. <u>2006</u> 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 <u>John Q. Public, Owner</u> personally.		
Addresses/Address	Indicate whether Designee or Contractor	
John Q. Public 210 Center Rd. Wyoming MI	Designee-owner	
<u>Harry Smith, Partner</u> (Signature/Printed Name)		
Subscribed and sworn to before me This <u>12th</u> day of <u>October</u> , A.D. <u>2006</u> <u>Marion Jones</u> Notary Public, <u>Kent</u> County, Michigan My Commission expires: <u>December 30, 2009</u>		
*Use if service was by certified mail. **Use if service was made personally.		

Within 15 days of filing the Claim of Lien, a subcontractor, supplier or laborer must present a copy of the recorded Claim of Lien to the homeowner or designee (listed on the Notice of Commencement).

If a lawsuit is not filed within one year from the date of recording the Claim of Lien, the property owner or that person's agent or attorney may present an affidavit to the County Clerk to request the County Clerk to examine the court records to confirm the absence of a filing of a lawsuit to foreclose on the claim of lien and issue a certificate of fact bearing the seal of the circuit court. The certificate should be recorded in the county register of deeds to serve as a discharge of the claim of lien.

- 3) If the lien has been assigned (legally attaching an interest) it shall state "The construction lien having been assigned, this claim of lien is made by _____ as assignee "thereof".
- 4) The claim of lien shall have attached to it a **Proof of Service of Notice of Furnishings**.

This is a notarized Sworn Statement that the contract did fulfil the requirement of providing the Notice of Furnishing in a timely manner.

PROOF OF SERVICE OF CLAIM OF LIEN		
State of Michigan		
} §		
County of <u>Bay</u>		
<u>James D. Underwood</u> , a person of suitable age and discretion, as the duly authorized agent for <u>J. D. Underwood Enterprises</u> , being first duly sworn in accordance with the law, deposes and says:		
That on the <u>16th</u> day of <u>March</u> , A.D. <u>2006</u> , he/she has served a Claim of Lien upon the owner/designee named in the Notice of Commencement, (a true and exact copy of which is attached hereto) by U.S. Certified Mail, Return Receipt requested, and with postage fully prepaid thereon to the following person(s) with the certified number as indicated:		
Addressee/Address	Certified Mail Number	Indicate whether Owner, Designee or Contractor
Tom Smithson 4321 Datus St. Bay, MI	P-65473	Owner
R.C. Construction 12390 Justin Rd. Bay, MI	P-65472	Contractor
OR		
**That on the _____ day of _____ A.D. 20____ he/she personally served a true copy of the Claim of Lien (a true and exact copy of which is attached hereto) upon the following person(s) by handing personally said true copy of said Claim of Lien to:		
Addressee/Address	Indicate whether Owner, Designee or Contractor	
<u>John D. Underwood</u> (Printed name/signature of Deponent)		
Subscribed and sworn to before <u>Linda Titus</u> Notary Public, <u>Ingham</u> County, Michigan My Commission Expires: <u>December 31, 2008</u>		
*Use if service was by certified mail. **Use if service was made personally.		

- 5) A person who files a lien must inform the designee by certified mail return receipt requested or delivered personally at the address provided on the Notice of Commencement within 15 days of the filing.
- 6) Laborers may authorize an agent to file a claim of lien. This could also include the situation where one claim is addressing the non-payment to several laborers with one agent representing them all.

570.1112

- 1) If no actions to enforce a claim of lien happen within the time limits required, the register will record this non-action and file the legal document.
- 2) There is a fee for the filing just mentioned.
- 3) The recording of Notice of Commencement or claim shall provide notice to all additional purchasers on claimants.

570.1113

- 1) If a lien claimant demands in writing that an owner or a contractor make available the following items, the owner and contractor must comply within 10 days:
 - a) The copy of the contract between the owner and the prime contractor
 - b) A written statement of the amount due and unpaid at this time
 - c) If an owner or contractor does not comply with this demand, the owner on the contract is liable for all of the damages sustained by the lien claimant.
- 2) If an owner or contractor demands in writing that a lien claimant make available a written statement as to the amount of labor and material that they have provided to the date of this written demand and the amount that is currently owed to them and this information is not provided within 10 days of its demand, the owner or contractor shall not be required to pay until it is received.

570.1114

If a written contract does not exist between and owner and a contractor, the contractor cannot enforce a lien claim.

The information below must be written in the same size print as the rest of the contract.

- a) Residential contractor or a residential maintenance and alteration contractor is required to be licensed under Article 24 of the Occupational Code, 1980 PA 299, MCL 339.2401 to 339.2412.
- b) The license number of the contractor.

570.1114A

- 1) If a claimant who is required to be licensed, files a lien claim, the owner or any person effected by the lien can initiate the action to discharge the lien.
- 2) If an unlicensed contractor files a lien, the unlicensed contractor is liable for all costs incurred by the person who initiated the action to discharge the lien. Including actual cost and attorney fees.
- 3) A claimant must state in the complaint when filing the lien, that they are licensed when required to be and they have to prove it when in court.

570.1115

- 1) A contract cannot require in its conditions that a right to a lien is waived (relinquished) before any improvement is provided.

If a waiver is obtained because a person actually paid for the improvement, the waiver is valid. If a lien claimant excepted a promissory note or upon the owner proving to the claimant that they have been approved for the loan to improve their property and signed the waiver under one of these conditions, the waiver would not be valid.

- 2) A lien claimant who received full payment for his or her contract shall provide the owner, lessee or designee a Full Unconditional Waiver of Lien (Note: if a G.C. pays a claimant directly from his own account, this unconditional waiver would be used to allow him to be reimbursed.)

WAIVERS

A **WAIVER** is given by a contractor, subcontractor or supplier whenever payment is made. In simple terms, it is a receipt for payment. But most importantly, it announces to the homeowner that the construction lien rights are being relinquished either in full, if full payment is received; or in part, if partial payment was received. Waivers should be provided directly to the owner, lessee or designee from the lien claimant named on the waiver. If the waiver is provided by anyone other than the lien claimant, the owner, lessee or designee shall contact the lien claimant to verify the authenticity of the waiver.

Waivers are legal documents and must use proscribed wording. To be considered legal documents, and to serve the purpose for which they were designed, use the appropriate type of waiver as identified below. Be certain of the kind of Waiver you sign is appropriate to the situation.

FULL UNCONDITIONAL WAIVER states that full payment has been received and that there is no claim of lien against the homeowner's property.

FULL UNCONDITIONAL WAIVER

My/our contract with Standard Builders, Inc. to provide
Window/doors for the improvement of the property described as Lot 41, Pinetree
Lake Subdivision, Detroit, Wayne County, Michigan, #246-89-04
_____ having been

fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are hereby waived and released.

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

United Window Company
(Printed Name of Lien Claimant)

United Window Company
(Signature of Lien Claimant)

Signed on: May 27, 2006 Address: 16 Main Street
Northville MI 48203
Telephone: (313) 842-1902

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

- 3) A lien claimant who receives partial payment shall provide the owner, lessee or designee a Partial Unconditional Waiver of the amount the claimant has received if the owner request it. (Note: Partial Unconditional Waivers are used when a contractor is going to be collecting more funds as the job progresses, but is releasing his lien right to the extent of money owed to this point).

PARTIAL UNCONDITIONAL WAIVER is a "receipt" for partial payment which may still have a condition pending, or will be effective as soon as payment is received.

PARTIAL UNCONDITIONAL WAIVER	
I/we have a contract with <u>Standard Builders, Inc.</u>	
to provide <u>labor for plumbing installations</u> for the improvements to the	
property described as <u>Lot 243, Green Lawn Farm Subdivision,</u>	
<u>Centerville, Muskegon County, Michigan</u>	
<u>#242-19-8763</u>	
and by signing this waiver, waive my/our construction lien to the amount of <u>\$6,250.00</u>	
for labor/materials provided through <u>August 30, 2006</u>	
(date of draw cutoff or actual payment)	
This waiver, together with all previous waivers, if any, (circle one) does/does not cover all amounts due to me/us for contract improvement provided through the date shown above.	
If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this wavier directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.	
STATEMENT OF ACCOUNT	
Contract Price	\$ <u>10,000</u>
Extras	\$ <u> </u>
Deduct Credit	\$ <u>0</u>
Previously Paid	\$ <u>983</u>
Retention	\$ <u>0</u>
Balance	\$ <u>0</u>
This Payment	\$ <u>6,250</u>
Balance to Become Due	\$ <u>2,767 + 187 fringes</u>
Signed on: <u>November 10, 2006</u>	<u>Merton Drane</u> (Printed Name of Lien Claimant)
	<u>Merton Drane</u> (Signature of Lien Claimant)
	Address: <u>97 Mail Street</u> <u>Centerville MI 48439</u>
	Telephone: <u>(616) 214-3902</u>
DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.	

- 4) Partial Conditional and Full Conditional Wavers become effective upon a claimant actually receiving the payment.

(Note: Title companies that disburse the contract funds as a service to the lender require a waiver to disburse any funds. This Conditional Waiver fulfills this requirement. The monies owed to the claimant can be paid in check written directly to the claimant.

The conditional waiver states that the contractor or supplier will not file a lien if they are paid the amount provided on the waiver.

PARTIAL CONDITIONAL WAIVER is a "receipt" for partial payment which may still have a condition pending, or will be effective as soon as payment is received. With partial waivers a balance may still owed, or more work may remain to be done. A lien right still exists for any unpaid debts until the contract is paid in full.

PARTIAL CONDITIONAL WAIVER

I/we have a contract with Master Construction, Inc.
(other contracting party)

to provide Roofing and insulation

for the improvement to the property described as: _____

Lot 26, Green Acres Subdivision, Saginaw Heights, Bay County, Michigan Sidwell

#267-43-02 Plat 27 (commonly known as 456 Stoney St, Saginaw, MI)

and by signing this waiver, waive my/our construction lien to the amount of
\$ 1,243.90, for labor/materials provided through October 31, 2006
(date of draw cutoff or actual payment)

This waiver, together with all previous waivers, if any, (circle one) does/does not cover all amounts due to me/us for contract improvement provided through the date shown above. This waiver is conditioned on actual payment of the amount shown above.

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us, or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contracting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

Price Roofing, Supplier
(printed name of lien claimant)

Samuel R. Price
(signature of lien claimant)

Signed on: November 12, 2006 Address: 1629 Shorelake Rd.

Saginaw MI 48437

Telephone: (517) 321-4369

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

Waivers that are "Full" means that no further claim is expected upon this property.

FULL CONDITIONAL WAIVER states that as soon as full payment is received, or some condition of payment as agreed upon is met, there will be no claim of lien against the homeowner's property.

FULL CONDITIONAL WAIVER

My/our contract with Standard Builders, Inc.

to provide cement/tiles/brick

for the improvement of the property described as: Lot 94, Charlestown Manor

Subdivision Northville, Oakland County, #224-82-190

has been fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are hereby waived and released.

This waiver is conditioned on actual payment of \$987.94.

If the improvement is provided to property that is a residential structure and if the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/on of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

Bob Montrose, Hill Brick Co.
(Printed name of lien claimant)

Bob Montrose
(Signature of lien claimant)

Signed on April 12, 2006

Address: 195 Hill Street

Anytown, MI

Telephone: (313) 243-8900

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

570.1116

- 1) A lien claim can at anytime be discharged if a bond is files with the county clerk in the county in which a lien is placed. The bond must be for twice the amount of the lien filed. It shall also state the lien claimant as the obligee . The bond can be placed with cash or through a surety company.
- 2) The county clerk will notify the claimant that a bond has been placed. The claimant then has 10 days to object to the sufficiency of the bond. The surety company would then need to appear at the county clerk to answer under oath, the question asked by the claimant.

570.1117

- 1) Proceeding to enforce a construction lien must be held within 1 year of the date the lien was recorded.
- 2) At the time of commencing the action of foreclosure, the plaintiff shall record a Notice of Lis-pendens. (This notifies interested parties of a pending lawsuit.
- 3) An action of foreclosure of a lien can be maintained by an agent of laborers.
- 4) All persons who have an interest in the property (Example: a second owner will be made aware of the action and given an opportunity to defend against the action.)
- 5) N/A
- 6) A lien claimant who has been made party to an action (example second owner) for foreclosure, may claim their interest in the process by a counter claim or cross claim. This provides the ability to collect from the proceeds of the sale what is rightfully theirs.
- 7) Contractors must have provided a Sworn Statement, when requested, in order to enforce a construction lien through foreclosure.

570.1118

- 1) Action to enforce construction liens shall be brought in the county circuit court.
- 2) The court decides the amount to be paid, if any, by the evidence presented. Either of the parties that prevail in the case, whether it be the claimant or the defendant, may be awarded their attorney's fees.

570.1118 a

- 1) If an owner or lessee provides proof of the circuit court that the contractor has been paid according to the contractor by providing a copy of the contract and any change orders along with proof of the payment the claim will not be valid.
- 2) If there is no written contract as required by this law. The court will presume that the owner or lessee has paid the contractor. The presumption maybe overcome only after the contractor provides clear and convincing evidence to the contrary.

570.1119

- 1) All claimants entitled to a construction lien upon a property shall have equal priority.
- 2) Construction liens take priority over all garnishments for contract debt.
- 3) The first claimant in the enforcement of a construction lien takes priority over those possible claimants that follow.
- 4) Mortgage or other liens that existed before the project that caused the construction lien, take priority over all lien claimants.
- 5) Retainage is not due upon completion of a project.

Example: the house is fully complete, but only ½ paid for because the G.C. has diverted funds. The homeowner does not have to provide more funds to the G.C. in this case even though contractually the retainage payment is supposed to be provided when the project is fully complete.

570.1120

Lien claimants who cannot complete a contract because of default by the owner are entitled to value of the work actually performed. The claimant is also entitled to additional damages.

570.1121

- 1) If the court finds the claim to be valid, but the claim is still not paid, the court can order the home to be sold.

If the property has other loans attached against it that were effective before this improvement, they will be paid first. The court may order their lien be to satisfied from rent, profits or income from the property if it is an income property.

- 2) When a home is sold due to foreclosure, taxes and insurances due to date are paid for out of the proceeds.
- 3) In order for foreclosure, the judge can give the defendant a time limit to pay as ordered, not to exceed 4 months. When the time limit ends, the order is final.
- 4) Upon the sale of the property, the judge will direct the distribution of funds. Any proceeds left over after all claims are paid will go to the owner.
- 5) If there are more claims expected against a property foreclosed upon, the judge can retain funds from the sale to use for this expected purpose.
- 6) The time period where the judge gives the defendant time to pay as ordered requires that all claims, taxes and insurances be paid as ordered in order to qualify.

570.1122 – N/A

570.1123 – N/A

570.1124 – N/A

570.1125 A lien claimant can assign a person to represent them in the lawsuit.

570.1126

- 1) a) Construction involving the owner of one condo, a lien can only be attached to that one condo.
b) If the owner is a developer and owns several condos, the lien will only go against the units that were owned by the developer at the time of the recording of the lien.
c) When there is an association of co-owners of condominium units, the attachment of the lien will effect each owner to the extent that the owner has to contribute to the expenses to maintain the property on a percentage basis.
d) To bring a construction lien against a condo, the contract must have been with a developer or owner.

570.1127

- 1) When a lien claimant is fully paid, the claimant shall deliver to the owner a certificate that the claim has been paid and is now discharged.
- 2) An agent of a group of laborers bringing a lien action, can deliver the certificate of Discharge of Lien, but a laborer can deliver it also.

DISCHARGE OF LIEN

When the Claim of Lien has been fully paid, the lien claimant must deliver to the owner or lessee, (or owner's agent) a Discharge of Lien. This releases all rights to the property and informs all parties that the debt has been paid.

The Discharge of Lien should be recorded by the lien claimant at the county Register of Deeds to officially release the lien from the property. The lien claimant is responsible for providing a copy of the filed "Discharge of Lien" to the owner, lessee, or owner's agent.

DISCHARGE OF CONSTRUCTION LIEN

Notice is hereby given that the Construction Lien filed by Acme Lumber Co. on the 29th day of August, 2006 in the office of Register of Deeds, County of Clinton, State of Michigan, said lien being recorded in Liber 0067, Page 6589 against the following described premises: (Property Description Attached) is **RELEASED AND DISCHARGED.**

Sandra L. Shermaniscku
Lien Claimant or Agent (name printed)

Date: October 4, 2006

State of Michigan

} §

County of Ingham

On this 4th day of October, 2006, before me, a Notary Public, in the County personally appeared Sandra L. Shermaniscku on behalf of Acme Lumber Co., know to me to be the person who executed the foregoing instrument an acknowledged the same to be his/her free act and deed.

Paula Stonney
(printed name/signature)
Notary Public, Ingham County, MI
My Commission expires: 7/31/2009

Drafted by and, when recorded,
Return this document to:
Sandra L. Shermaniscku
45678 Johnson Rd.
Denton, MI 49333

570.1128

If the proceeding to enforce a lien has not commenced in the first year maximum time period, the owner can present an affidavit as to when the lien was recorded to the county clerk. The owner will receive a certificate of that fact which will be recorded in the county register of deeds and the lien will have no effect.

570.1201 - The Home Owner Construction Lien Recovery Fund

- 1) The fund shall be self-supporting and funded as follows:
 - a) An applicant for a license will pay a fee of \$10 per year for the initial license, as well as \$10 per year each time the license is renewed.
 - b) A laborer who seeks to recover from the fund for the first time will pay \$15 at the time they are paid by the fund.
 - c) With the exception of contractors or laborers, all other claimants such as material suppliers may become a member by paying a \$50 fee prior to the claimant's contract for improvement.
 - d) Builders and M & A Contractors pay \$10 per year to the fund. The license period is 3 years so \$30 is collected at the time of application for a renewal license.
- 2) If a person lets their membership to the fund lapse, they are not entitled to collect from the fund for activities that happen after the expiration.
- 3) Members of the fund must inform the department of any changes of name, address or business organization within 30 days of the change.
- 4) At least 30 days before the expiration of a membership, the department will send a renewal notice to the last known address.
- 5) A person cannot recover from the fund if they haven't paid into the fund.
- 6) If on December 1st of any year the balance of the fund exceeds \$6,000,000 the dues are suspended. If on December 1st of any year the fund is less than \$4,000,000 the dues are activated.

570.1202

- 1) The director of the department shall manage the fund.
- 2) The department will pay for the cost to administer the fund, such as, clerical help, investigations, litigation, fees, etc. out of the fund.

570.1203

- 1) If an owner has paid a G.C., but the G.C. has diverted these funds, the claim of lien does not attach to the residential structure to the extent of what has been paid by the home owner.
 - a) The owner must provide an affidavit indicating the amount of payment including a copy of the contract and any change orders and evidence of payment by the owner.
 - b) The owner must not have acted together with the contractor to commit fraud against the fund.
 - c) The owner must cooperate with the department in defending the fund.
- 2) If there is no contract as required, the filing of an affidavit creates a rebuttable presumption that the owner has paid the contractor. The presumption can only be overcome with clear and convincing evidence by the contractor.
- 3) If an owner makes payment in full to a G.C., but the G.C. diverts funds from the contract, the claim of lien will not attach to an owner's property. A person who has recorded a claim of lien, but is unable to enforce this claim because the owner paid the G.C., can be paid from the fund if:
 - a) They would have been entitled if not for the provision of subsection 1.
 - b) That payment was made by the owner to the G.C.

- c) The contractor or subcontractor has retained or used the proceeds without having paid the claimant.
- d) The claimant is a member of the fund.
- e) There is no fraudulent activity.
- f) There has been no law broken.
- g) There has been a reasonable effort to obtain the funds from the contractor
- h) The claimant has contracted with the same entity that contracted with the owner.
- i) Suppliers must, before doing business with a contractor:
 - i) Required the contractor to provide a credit report if not paying in full for materials
 - ii) Require corporations that are publicly traded to verify their credit rating.

The credit report must not have uncovered information as follows:

- a) The contractor had been bankrupt within the last 2 years.
 - b) The contractor at the time of the application was under receivership.
 - c) Had total delinquent judgments of more than \$1,000.
- 4) A claimant who seeks to enforce a lien through foreclosure must join the fund as a defendant in the required time period of 1 year from the time a lien was filed by serving a summons and complaint on the office of the fund administrator. Failure to serve this summons and complaint shall ban the recovery from the fund. (Basically you need to formally get in line with all of the claimants against a property.)
 - 5) The attorney general shall defend the fund in the same way an owner would in an attempt to avoid having to pay.
 - 6) The fund will only pay interest on the money due for 90 days after the lien was recorded.
 - 7) a) The fund will not pay to a supplier who supplies material to a contractor that was delinquent on his bill at the time the material was delivered more than:
 - 1) 2008 150 days
 - 2) 2009 120 days
 - 3) 2010 and thereafter 90 days
 - b) The contractor or subcontractor had already exceeded his credit limit with the supplier when the material was delivered.
 - 8) Payment from the fund must be a court order.

570.1204 The maximum that the fund will pay out is \$100,000 per residential structure. When it becomes evident the maximum of \$100,000 will likely be exceeded, the department may delay payment until the total number of claims are received then they will dispense the fund on an equitable percentage basis.

570.1205

- 1) No employee or officers of the State can be personally held liable for payment to a claimant because of their actions.
- 2) If the fund pays out to claimant, the fund can bring an action against the defendant to recover the funds paid out.

570.1206

- 1) The department will post the name and license number of any contractor or qualifying officer who's failure to pay a lien claimant cause the fund to pay out.
- 2) If the department pays from the fund, the department will enter a complaint against the licensee and disciplinary actions will proceed.

570.1207 Committing fraud to collect from the fund is a felony.

Building Permit Information

Are building permits necessary?

Before construction of a building or structure, an owner, or the owner's builder, architect, engineer, or agent, shall submit an application in writing to the appropriate enforcing agency for a building permit. A permit is also required when the use or occupancy of a structure or portion thereof is changed.

A permit is not required for ordinary repairs. Ordinary repairs to structures may be made without permit, but such repairs shall not include:

1. The cutting away of any wall or portion of a wall
2. The cutting away of any partition or portion of a partition
3. The removal or cutting of any structural beam
4. The removal or cutting of any bearing support
5. The removal or change of any required means of egress
6. The rearrangement of parts of a structure affecting the exit requirements
7. The addition to, alteration of, replacement of, or relocation of any:
 - a. Standpipe
 - b. Water supply
 - c. Sewer
 - d. Drainage
 - e. Drain leader
 - f. Gas soil
 - g. Waste
 - h. Vent or similar piping
 - i. Electric wiring
 - j. Mechanical (HVAC)
 - k. Other work affecting public health or general safety

Plans and Specifications (Construction Documents)

A set of construction documents is required with each application for a permit. The submission of construction documents may be waived by the building official when code compliance can be determined based on the description in the application. Construction documents must be sealed and signed by an architect or professional engineer in accordance with P.A. 299 of 1980, as amended. The seal and signature is not required for one and two family dwellings less than 3500 square feet of calculated floor area and public works less than \$15,000 in total construction cost.

When is a license necessary to secure a building permit?

A person engaged in the construction of a residential structure or a combination residential and commercial structure must be licensed as a Residential Builder with the Department of Labor & Economic Growth. There are certain exceptions in the licensing law (P.A. 299 of 1980, as amended) to this requirement.