

HOUSE BILL No. 4839

May 31, 2005, Introduced by Reps. Wojno, McDowell, Adamini, Bieda, Anderson, Proos, Garfield, Gaffney, Plakas, Gonzales, Vagnozzi and Farhat and referred to the Committee on Regulatory Reform.

A bill to amend 1980 PA 497, entitled "Construction lien act," by amending the title and sections 104, 106, 107, 114, 201, 202, 203, and 204 (MCL 570.1104, 570.1106, 570.1107, 570.1114, 570.1201, 570.1202, 570.1203, and 570.1204), sections 104, 106, 107, 114, and 203 as amended by 1982 PA 17, section 201 as amended by 1984 PA 190, and section 202 as amended by 1981 PA 191, and by adding section 114a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to establish, protect, and enforce by lien the rights of persons performing labor or providing material or equipment for the improvement of real property; to provide for certain defenses

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1 with respect thereto; to establish ~~a~~ **THE** homeowner construction
2 lien recovery fund; ~~within the department of licensing and~~
3 ~~regulation;~~ to provide for the powers and duties of certain state
4 officers **AND AGENCIES**; to provide for the ~~assessments~~ **ASSESSMENT**
5 of certain occupations; to **PROVIDE REMEDIES AND** prescribe
6 penalties; and to repeal ~~certain~~ acts and parts of acts.

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

10 (2) "Department" means the department of ~~licensing and~~
11 ~~regulation~~ **LABOR AND ECONOMIC GROWTH**.

12 (3) "Designee" means the person named by an owner or lessee to
13 receive, on behalf of the owner or lessee, all notices or other
14 instruments whose furnishing is required by this act. The owner or
15 lessee may name himself or herself as designee. The owner or lessee
16 may not name the contractor as designee. However, a contractor who
17 is providing only architectural or engineering services may be
18 named as designee.

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

25 (5) "Fund" means the homeowner construction lien recovery fund
26 created ~~under part 2~~ **IN SECTION 201**.

27 (6) "General contractor" means a contractor who contracts with

1 an owner or lessee to provide, directly or indirectly through
2 contracts with subcontractors, suppliers, or laborers,
3 substantially all of the improvements to the property described in
4 the notice of commencement.

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

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

16 Sec. 106. (1) "Person" means an individual, corporation,
17 partnership, sole proprietorship, association, other legal entity,
18 or any combination thereof.

19 (2) "Project" means the aggregate of improvements contracted
20 for by the contracting owner.

21 (3) "Residential structure" means an individual residential
22 condominium unit or a residential building containing not more than
23 2 residential units, the land on which it is or will be located,
24 and all appurtenances, ~~thereto,~~ in which the owner or lessee
25 contracting for the improvement is residing or will reside upon
26 completion of the improvement.

27 (4) "Subcontractor" means a person, other than a laborer or

1 supplier, who pursuant to a contract between himself or herself and
2 a person other than the owner or lessee performs any part of a
3 contractor's contract for an improvement.

4 (5) "Supplier" means a person who, pursuant to a contract with
5 a contractor or a subcontractor, leases, rents, or in any other
6 manner provides material or equipment ~~which~~ **THAT** is used in the
7 improvement of real property.

8 (6) "Wages" means all earnings of an employee whether
9 determined on the basis of time, task, piece, commission, or other
10 method of calculation for labor or services except ~~those defined~~
11 ~~as~~ fringe benefits and withholdings.

12 Sec. 107. (1) Each contractor, subcontractor, supplier, or
13 laborer who provides an improvement to real property ~~shall have~~
14 **HAS** a construction lien upon the interest of the owner or lessee
15 who contracted for the improvement to the real property, as
16 described in the notice of commencement ~~provided for by~~ **GIVEN**
17 **UNDER** section 108 or 108a, the interest of an owner who has
18 subordinated his or her interest to the mortgage for the
19 improvement of the real property, and the interest of an owner who
20 has required the improvement. A construction lien acquired pursuant
21 to this act shall not exceed the amount of the lien claimant's
22 contract less payments made on the contract.

23 (2) A construction lien under this act ~~shall attach~~ **ATTACHES**
24 to the entire interest of the owner or lessee who contracted for
25 the improvement, including any subsequently acquired legal or
26 equitable interest.

27 (3) Each contractor, subcontractor, supplier, or laborer who

1 provides an improvement to real property to which the person
2 contracting for the improvement had no legal title ~~shall have~~ **HAS**
3 a construction lien upon the improvement for which the contractor,
4 subcontractor, supplier, or laborer provided labor, material, or
5 equipment. The forfeiture, surrender, or termination of any title
6 or interest held by ~~any~~ **AN** owner or lessee who contracted for an
7 improvement to the property, ~~or by any~~ **AN** owner who subordinated
8 his or her interest to the mortgage for the improvement, or ~~by any~~
9 **AN** owner who has required the improvement ~~shall~~ **DOES** not defeat
10 the lien of the contractor, subcontractor, supplier, or laborer
11 upon the improvement.

12 (4) If the rights of a person contracting for an improvement
13 as a land contract vendee or a lessee are forfeited, surrendered,
14 or otherwise terminated, any lien claimant who has provided a
15 notice of furnishing or is excused from providing a notice of
16 furnishing ~~pursuant to~~ **UNDER** section 108, 108a, or 109 and who
17 performs the covenants contained in the land contract or lease
18 within 30 days after receiving actual notice of the forfeiture,
19 surrender, or termination ~~shall be~~ **IS** subrogated to the rights of
20 the contracting vendee or lessee as those rights existed
21 immediately before the forfeiture, surrender, or termination.

22 (5) For purposes of this act, if the real property is owned or
23 leased by more than 1 person, **THERE IS A REBUTTABLE PRESUMPTION**
24 **THAT** an improvement to real property ~~pursuant to~~ **UNDER** a contract
25 ~~which was entered into by~~ **WITH** an owner or lessee ~~shall be~~
26 ~~presumed to have been~~ **WAS** consented to by any other co-owner or
27 co-lessee. ~~, but the presumption shall in all cases be rebuttable.~~

1 If enforcement of a construction lien through foreclosure is sought
2 and the court finds that the improvement ~~has been~~ **WAS** consented
3 to by a co-owner or co-lessee who did not contract for the
4 improvement, the court shall order the entire interest of that co-
5 owner or co-lessee, including any subsequently acquired legal or
6 equitable interest, to be subject to the construction lien. A
7 deficiency judgment shall not be entered against a noncontracting
8 owner, co-owner, lessee, or co-lessee.

9 (6) If the real property of an owner or lessee is subject to
10 **MULTIPLE** construction liens, the sum of the construction liens
11 shall not exceed the amount ~~which~~ the owner or lessee agreed to
12 pay the person with whom he or she contracted for the improvement
13 as modified by ~~any and~~ all additions, deletions, and ~~any~~ other
14 amendments, less payments made by or on behalf of the owner or
15 lessee, pursuant to either a contractor's sworn statement or a
16 waiver of lien, in accordance with this act.

17 (7) **AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED**
18 **THIS SUBSECTION, A CONSTRUCTION LIEN OF A SUBCONTRACTOR OR SUPPLIER**
19 **FOR AN IMPROVEMENT TO A RESIDENTIAL STRUCTURE SHALL NOT INCLUDE AN**
20 **AMOUNT CHARGED OR ASSESSED UNDER THE CONTRACT BETWEEN THE**
21 **SUBCONTRACTOR OR SUPPLIER AND THE GENERAL CONTRACTOR FOR INTEREST**
22 **ON THE UNPAID PRINCIPAL AMOUNT DUE, A TIME-PRICE DIFFERENTIAL, A**
23 **FINANCE CHARGE, OR ANY OTHER ITEM OF INTEREST.**

24 Sec. 114. A contractor ~~shall~~ **DOES** not have a right to a
25 construction lien ~~upon~~ **ON** the interest of ~~any~~ **AN** owner or
26 lessee in a residential structure unless the contractor has
27 provided an improvement to the residential structure pursuant to a

1 written contract between the owner or lessee and the contractor and
 2 any amendments or additions to the contract **ARE** also ~~shall be~~ in
 3 writing. The contract required by this section shall contain a
 4 statement, in type no smaller than that of the body of the
 5 contract, ~~setting forth~~ **STATING** all of the following:

6 (a) That a residential builder or a residential maintenance
 7 and alteration contractor is required to be licensed under article
 8 24 of ~~Act 299 of the Public Acts of 1980, as amended, being~~
 9 ~~sections 339.2401 to 339.2412 of the Michigan Compiled Laws~~ **THE**
 10 **OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2401 TO 339.2412.** That an
 11 electrician is required to be licensed under ~~Act No. 217 of the~~
 12 ~~Public Acts of 1956, as amended, being sections 338.881 to 338.892~~
 13 ~~of the Michigan Compiled Laws~~ **THE ELECTRICAL ADMINISTRATIVE ACT,**
 14 **1956 PA 217, MCL 338.881 TO 338.892.** That a ~~plumber~~ **PLUMBING**
 15 **CONTRACTOR** is required to be licensed under ~~Act No. 266 of the~~
 16 ~~Public Acts of 1929, as amended, being sections 338.901 to 338.917~~
 17 ~~of the Michigan Compiled Laws~~ **THE STATE PLUMBING ACT, 2002 PA 733,**
 18 **MCL 338.3511 TO 338.3569. THAT A MECHANICAL CONTRACTOR IS REQUIRED**
 19 **TO BE LICENSED UNDER THE FORBES MECHANICAL CONTRACTORS ACT, 1984 PA**
 20 **192, MCL 338.971 TO 338.988.**

21 (b) If the contractor is required to be licensed to provide
 22 the contracted improvement, that the contractor is ~~so~~ licensed
 23 **AND THE CONTRACTOR'S LICENSE NUMBER.**

24 ~~———— (c) If a license is required, the contractor's license~~
 25 ~~number.~~

26 **SEC. 114A. (1) THE OWNER OF RESIDENTIAL PROPERTY ON WHICH A**
 27 **CONSTRUCTION LIEN HAS BEEN RECORDED BY A PERSON WHO WAS NOT**

1 LICENSED AS DESCRIBED IN SECTION 114, OR ANY PERSON AFFECTED BY THE
2 LIEN, MAY BRING AN ACTION TO DISCHARGE THE LIEN.

3 (2) IF THE COURT IN AN ACTION UNDER SUBSECTION (1) DETERMINES
4 THAT THE PERSON WHO RECORDED THE LIEN WAS NOT LICENSED AS REQUIRED,
5 THE UNLICENSED PERSON IS LIABLE TO THE PERSON WHO BROUGHT THE
6 ACTION FOR ALL DAMAGES THAT RESULT FROM THE RECORDING AND ANY
7 ATTEMPTS TO ENFORCE THE LIEN, INCLUDING ACTUAL COSTS AND ATTORNEY
8 FEES.

9 (3) A PERSON WHO BRINGS AN ACTION TO RECOVER FOR THE
10 PERFORMANCE OF AN ACT OR CONTRACT FOR WHICH A LICENSE IS REQUIRED
11 AS DESCRIBED IN SECTION 114 SHALL ALLEGE IN THE COMPLAINT AND HAS
12 THE BURDEN OF PROVING THAT HE OR SHE WAS PROPERLY LICENSED.

13 Sec. 201. (1) ~~A~~ THE homeowner construction lien recovery
14 fund is created within the department. ~~of licensing and~~
15 ~~regulation.~~ The fund shall be self-supporting and shall ~~consist~~
16 ~~of assessments charged in the following manner~~ BE FUNDED AS
17 FOLLOWS:

18 (a) ~~Except as provided in subsection (4), when applying for~~
19 ~~renewal licensure for 1982 and when applying for initial licensure,~~
20 ~~each of the following persons shall be assessed in~~ IN addition to
21 the license fee, a ~~fee of \$50.00 for deposit in the fund~~ PERSON
22 WHO APPLIES FOR OR WHO APPLIES TO RENEW 1 OF THE FOLLOWING SHALL
23 PAY A FEE OF \$10.00 FOR EACH YEAR THAT THE LICENSE WILL BE VALID:

24 (i) A ~~person applying for a~~ residential builders license or a
25 residential maintenance and alteration contractor's license under
26 article 24 of the occupational code, ~~Act No. 299 of the Public~~
27 ~~Acts of 1980, as amended, being sections 339.2401 to 339.2412 of~~

1 ~~the Michigan Compiled Laws 1980 PA 299, MCL 339.2401 TO 339.2412.~~

2 (ii) ~~A person applying for an~~ **AN** electrical contractor's
3 license under the electrical administrative act, ~~Act No. 217 of~~
4 ~~the Public Acts of 1956, as amended, being sections 338.881 to~~
5 ~~338.892 of the Michigan Compiled Laws 1956 PA 217, MCL 338.881 TO~~
6 **338.892.**

7 (iii) A ~~person applying for an~~ authorized master plumber's
8 **PLUMBING CONTRACTOR'S** license under ~~Act No. 266 of the Public Acts~~
9 ~~of 1929, as amended, being sections 338.901 to 338.917 of the~~
10 ~~Michigan Compiled Laws, which license authorizes the securing of~~
11 ~~plumbing installation permits~~ **THE STATE PLUMBING ACT, 2002 PA 733,**
12 **MCL 338.3511 TO 338.3569.**

13 (iv) A ~~person applying for a~~ **MECHANICAL CONTRACTOR'S** license
14 under the **FORBES** mechanical contractors act, **1984 PA 192, MCL**
15 **338.971 TO 338.988.**

16 (b) A laborer who seeks to recover from the fund **FOR THE FIRST**
17 **TIME** shall not be required to pay a fee until he or she obtains a
18 recovery from the fund, at which time a fee of \$15.00 shall be
19 withheld by the fund from the laborer's final recovery. ~~However,~~
20 ~~in no event shall the total amount withheld by the fund from a~~
21 ~~laborer in a 1-year period exceed \$50.00.~~

22 (c) Except for persons described in subdivisions (a) and (b),
23 all other lien claimants may become members of the fund by paying a
24 fee of \$50.00 prior to the date of the lien claimant's contract for
25 the improvement to ~~the~~ **A** residential structure. ~~A lien claimant~~
26 ~~under this subdivision shall not pay a fee of more than \$50.00 in a~~
27 ~~calendar year.~~ **IF THE LIEN CLAIMANT IS A SUPPLIER THAT CONDUCTS**

1 BUSINESS FROM MORE THAN 1 RETAIL LOCATION, EACH RETAIL LOCATION
2 SHALL BE TREATED AS A SEPARATE PERSON FOR PURPOSES OF PAYING FEES
3 AND RENEWAL FEES FOR FUND MEMBERSHIP.

4 (D) A PERSON WHO HAS PAID A FEE UNDER SUBDIVISION (B) OR (C)
5 SHALL PAY A RENEWAL FEE AS FOLLOWS:

6 (i) IF THE PERSON PAID THE INITIAL FEE ON OR BEFORE JUNE 1,
7 2005, A RENEWAL FEE OF \$50.00 ON OR BEFORE JUNE 1, 2008 AND A
8 RENEWAL FEE OF \$50.00 ON OR BEFORE JUNE 1 OF EVERY THIRD YEAR AFTER
9 THE FIRST RENEWAL PAYMENT.

10 (ii) IF THE PERSON PAID THE INITIAL FEE AFTER JUNE 1, 2005, A
11 RENEWAL FEE OF \$50.00 ON OR BEFORE THE FIRST JUNE 1 FOLLOWING THE
12 THIRD ANNIVERSARY DATE OF THE INITIAL PAYMENT AND A RENEWAL FEE OF
13 \$50.00 ON OR BEFORE JUNE 1 OF EVERY THIRD YEAR AFTER THE FIRST
14 RENEWAL PAYMENT.

15 ~~(2) If, on December 1 of any year, the balance in the fund is~~
16 ~~less than \$1,000,000.00, the director of licensing and regulation~~
17 ~~may require an additional assessment or payment, not to exceed~~
18 ~~\$50.00, from each of the persons described in subsection (1)(a) and~~
19 ~~(c), unless, within 30 legislative days after the director requires~~
20 ~~an additional assessment, the legislature, by majority vote of the~~
21 ~~members elected and serving in both houses by record roll call~~
22 ~~vote, adopts a concurrent resolution to prohibit the additional~~
23 ~~assessment. As used in this subsection "legislative day" means a~~
24 ~~day on which the senate and house is called to order and a quorum~~
25 ~~of the senate and house is present. A PERSON MAY PAY A RENEWAL FEE~~
26 ~~UNDER SUBSECTION (1)(D) AFTER THE DATE ON WHICH IT IS DUE, BUT IS~~
27 ~~NOT ENTITLED TO RECOVER FROM THE FUND FOR AN IMPROVEMENT MADE AFTER~~

1 THE DUE DATE AND BEFORE THE RENEWAL FEE IS PAID.

2 (3) A PERSON WHO BECOMES A MEMBER OF THE FUND BY PAYING A FEE
 3 UNDER SUBSECTION (1) SHALL NOTIFY THE DEPARTMENT DIVISION THAT
 4 ADMINISTERS THE FUND, IN WRITING, OF A CHANGE IN THE PERSON'S NAME,
 5 ADDRESS, OR FORM OF BUSINESS ORGANIZATION WITHIN 30 DAYS OF THE
 6 CHANGE. PROOF THAT A NOTICE OR OTHER DOCUMENT WAS MAILED OR, IF
 7 ANOTHER METHOD OF DELIVERY IS REQUIRED BY LAW OR RULE, DELIVERED BY
 8 THAT OTHER METHOD TO A MEMBER AT THE LAST ADDRESS THAT THE MEMBER
 9 PROVIDED TO THE FUND ADMINISTRATOR IS CONCLUSIVE PROOF THAT THE
 10 NOTICE OR DOCUMENT WAS RECEIVED BY THE MEMBER.

11 (4) AT LEAST 30 DAYS BEFORE THE DATE THAT A RENEWAL PAYMENT
 12 UNDER SUBSECTION (1)(D) IS DUE, THE DEPARTMENT SHALL SEND A NOTICE
 13 OF THE AMOUNT THAT WILL BE DUE AND THE PAYMENT DUE DATE TO THE
 14 PERSON WHO PAID THE FEE UNDER SUBSECTION (1)(B) OR (C). THE NOTICE
 15 SHALL BE SENT BY ORDINARY MAIL TO THE LAST ADDRESS THAT THE PERSON
 16 PROVIDED TO THE FUND ADMINISTRATOR.

17 (5) ~~(3)~~ A person ~~shall~~ IS not ~~be~~ entitled to recover
 18 from the fund unless ~~he or she~~ **THE PERSON** has paid into the fund
 19 as required by this ~~section~~ **ACT**.

20 ~~———— (4) Notwithstanding subsection (1)(a), a person shall not be~~
 21 ~~assessed more than \$50.00 in an assessment period regardless of the~~
 22 ~~number of licenses applied for or held.~~

23 Sec. 202. (1) The director of ~~licensing and regulation~~ **THE**
 24 **DEPARTMENT** shall manage the ~~affairs of the fund pursuant~~ **FUND**
 25 **ACCORDING** to this act. A detailed financial statement of the
 26 condition of the fund shall be published by the director annually.
 27 ~~This~~ **THE** fund shall be subject to an audit by the auditor general.

1 The state treasurer shall deposit or invest money from the fund, in
2 the same manner **AS** and subject to all provisions of law ~~with~~
3 ~~respect~~ **THAT APPLY** to the deposit or investment of state funds by
4 the state treasurer, and interest earned shall be credited to the
5 fund. The unexpended fund balance shall carry forward to the new
6 fiscal year at the end of each fiscal year.

7 (2) The department may employ ~~such~~ office clerical and
8 professional help and claims investigators as ~~are~~ necessary to
9 carry out ~~the provisions of~~ this act. The attorney general shall
10 assign members of his or her staff and may supplement that staff by
11 contracting with ~~those~~ private attorneys as ~~are~~ necessary to
12 adequately defend ~~the~~ actions against the fund. All wages,
13 professional fees, and other administrative expenditures necessary
14 for operation and defense of the fund, including legal counsel,
15 shall be charged to and payable from the fund. Except ~~as provided~~
16 ~~in subsection (3)~~ **FOR LEGAL COUNSEL FEES, THE AMOUNT PAID IN A**
17 **FISCAL YEAR FOR** wages, professional fees, and other administrative
18 expenditures ~~necessary for the operation of the fund~~ shall not
19 exceed 20% of ~~funds collected by the fund in the previous fiscal~~
20 ~~year~~ **THE AVERAGE OF THE ENDING BALANCES IN THE FUND FOR THE**
21 **PREVIOUS 2 FISCAL YEARS.**

22 ~~———— (3) If the \$50.00 fee is not assessed against license~~
23 ~~applications and renewals during a year under section 201, the~~
24 ~~limitation on fund expenditures provided in subsection (2) shall be~~
25 ~~calculated on the basis of the closest previous year in which the~~
26 ~~\$50.00 fee was assessed and collected for license application and~~
27 ~~renewals under section 201.~~

1 Sec. 203. (1) A claim of construction lien ~~shall~~ **DOES** not
2 attach to a residential structure, to the extent payments have been
3 made, if the owner or lessee files an affidavit with the court
4 indicating that the owner or lessee has done all of the following:

5 (a) Paid the contractor for the improvement to the residential
6 structure, ~~and~~ **INDICATING IN THE AFFIDAVIT** the amount of the
7 payment. **THE OWNER OR LESSEE SHALL ATTACH A COPY OF ANY EVIDENCE OF**
8 **THE PAYMENT THAT THE OWNER OR LESSEE HAS, INCLUDING, BUT NOT**
9 **LIMITED TO, A CANCELED CHECK OR A CREDIT CARD OR OTHER RECEIPT, TO**
10 **THE AFFIDAVIT.**

11 (b) Not colluded with any person to obtain a payment from the
12 fund.

13 (c) Cooperated and will continue to cooperate with the
14 department in the defense of the fund.

15 (2) ~~In the absence of a~~ **IF THERE IS NO** written contract
16 ~~pursuant to~~ **AS REQUIRED BY** section 114, the filing of an affidavit
17 under this section ~~shall create~~ **CREATES** a rebuttable presumption
18 that the owner or lessee has paid the contractor for the
19 improvement. The presumption may be overcome only by a showing of
20 clear and convincing evidence to the contrary.

21 (3) Subject to section 204, a person who has recorded a claim
22 of lien and who is precluded from ~~recovering~~ **HAVING** a
23 construction lien under subsection (1) may recover from the fund
24 the amount ~~for which the lien is established~~ **HE OR SHE WOULD HAVE**
25 **BEEN ENTITLED TO RECOVER BUT FOR SUBSECTION (1).** A person who seeks
26 recovery from the fund shall establish all of the following:

27 (a) That he or she would be entitled to a construction lien on

1 a residential structure except for the defense provided in
2 subsection (1).

3 (b) That payment was made by the owner or lessee to the
4 contractor or subcontractor.

5 (c) That the contractor or subcontractor has retained or used
6 the proceeds or any part of the proceeds paid to the contractor or
7 subcontractor without having paid the person claiming the
8 construction lien.

9 (d) That he or she has complied with section 201.

10 (e) That he or she has not colluded with another person to
11 obtain a payment from the fund.

12 (f) That he or she has complied with any applicable licensing
13 acts.

14 (g) That he or she has made a reasonable effort to obtain
15 payment from the contractor or subcontractor.

16 (h) That the contractor or ~~the~~ subcontractor ~~with~~ whom
17 the person claiming the construction lien contracted ~~with,~~ is
18 licensed if required by law to be licensed.

19 **(I) THAT THE CONTRACTOR OR SUBCONTRACTOR WITH WHOM THE PERSON**
20 **CLAIMING THE CONSTRUCTION LIEN CONTRACTED IS THE SAME INDIVIDUAL OR**
21 **LEGAL ENTITY WITH WHOM THE OWNER OR LESSEE CONTRACTED.**

22 **(J) IF THE PERSON CLAIMING THE CONSTRUCTION LIEN IS A**
23 **SUPPLIER, THAT HE OR SHE HAS DOCUMENTARY PROOF THAT, BEFORE HE OR**
24 **SHE PROVIDED THE MATERIAL OR EQUIPMENT THAT IS THE SUBJECT OF THE**
25 **LIEN WITHOUT OBTAINING ADVANCE PAYMENT IN FULL, HE OR SHE EXERCISED**
26 **DUE DILIGENCE TO DETERMINE THAT THE CONTRACTOR OR SUBCONTRACTOR TO**
27 **WHOM HE OR SHE PROVIDED THE MATERIAL OR EQUIPMENT WAS CREDITWORTHY.**

1 (4) A subcontractor, supplier, or laborer who seeks
 2 enforcement of a construction lien on a residential structure
 3 through foreclosure shall join the fund as a defendant in the
 4 foreclosure action ~~—~~ and **SERVE** a summons and complaint ~~shall be~~
 5 ~~served~~ on the ~~director~~ **OFFICE OF THE FUND ADMINISTRATOR WITHIN**
 6 **THE DEPARTMENT** by certified or registered mail ~~—~~ or by leaving a
 7 copy ~~thereof~~ at the office. ~~of the director.~~ The failure to
 8 serve a summons and complaint ~~upon the fund shall constitute a bar~~
 9 ~~to~~ **UNDER THIS SUBSECTION BARS** recovery from the fund. After
 10 ~~service upon the defendant of~~ **A DEFENDANT IS SERVED WITH** a summons
 11 and complaint in an action ~~in which enforcement of~~ **TO FORECLOSE** a
 12 construction lien, ~~through foreclosure is sought,~~ the department
 13 may intervene in the action as a party defendant with respect to
 14 other construction liens.

15 (5) The attorney general shall make every reasonable effort to
 16 defend the fund and may assert any defense to a claim of lien that
 17 would have been available to the owner or lessee.

18 (6) Payment from the fund shall be made only if the court
 19 finds that a subcontractor, supplier, or laborer is entitled to
 20 payment from the fund. Subject to section 204, after the judgment
 21 has become final the department shall pay the amount of the
 22 judgment out of the fund.

23 Sec. 204. (1) **A PAYMENT FROM THE FUND SHALL NOT INCLUDE AN**
 24 **AMOUNT FOR INTEREST ON THE UNPAID PRINCIPAL AMOUNT DUE, A TIME-**
 25 **PRICE DIFFERENTIAL, A FINANCE CHARGE, OR ANY OTHER FORM OF**
 26 **INTEREST.**

27 (2) The department shall not pay out of the fund to

1 subcontractors, suppliers, and laborers more than ~~-\$75,000.00~~
2 **\$100,000.00** per residential structure. When it appears that the
3 amount claimed from the fund ~~—~~ with respect to a residential
4 structure ~~—~~ will exceed ~~-\$75,000.00~~ **\$100,000.00**, the department
5 may delay payment until the total amount to be paid can be
6 ascertained. If the total amount payable to subcontractors,
7 suppliers, and laborers exceeds ~~-\$75,000.00~~ **\$100,000.00**, they
8 shall be paid their proportional shares of that amount.