

**Welcome!** The 60-Hour program is made up of 8 separate courses. Many of the courses are available in both Video and/or Text. **It is not necessary to complete both versions.** We offer both versions to ensure your learning style is addressed. You can choose whether you want to watch the video, or read the text, but you **DO NOT** have to do both. You can use either version for study purposes- just be sure to take the all quizzes in one version **OR** the other.

**This course will provide new builders with an understanding of the Code of Conduct and their responsibilities to their employees, to their customers and to the government. It includes knowledge needed in order for them to successfully maneuver through new business startup stages.**

**If you are taking this course as part of the 60-Hour Prelicense Program, please read the information below:**

The 60-Hour program is made up of 8 separate courses listed below. Many of the courses are available in both Video and Text/Online. It is not necessary to complete both versions. You can choose whether you want to watch the video version or read the text version. As the videos for the other four courses are completed, they will be added to your registration at no additional charge.

**COURSES**

1. Business of Building (Video or text)
2. Contracts, Liabilities and Risk Management (Video or text)
3. Project Management for Contractors (Video or text)
4. Marketing for Building Contractors (Video or text)
5. Building Green (Video or text)
6. Residential Code Review (Video coming soon)
7. Michigan Construction Safety (Video or text)
8. Overview of Building Trades (Video or text)

**PLEASE CONTINUE READING:**

**FREE WITH PURCHASE**

These are all optional and not required in order to complete the 60-Hour program, but the math tutorial and exam prep are extremely helpful in studying for the State exam.

--3-Hour Math Tutorial video for State exam prep

--Michigan Exam Prep (sample questions for State exam prep)

You will be sent the following via U.S. Postal Service and should receive them within 3-5 business days:

- Applications to the state of Michigan
- PSI Testing Information booklet
- MIOSHA Test Review sheet
- Books (if ordered)

# Business of Building



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## INTRODUCTION

### Hierarchy of Michigan Government

Residential Builders

#### **Governor: (Executive Branch)**

The governor must approve and sign off on all legislation. He/she also appoints new Directors and Board Members.

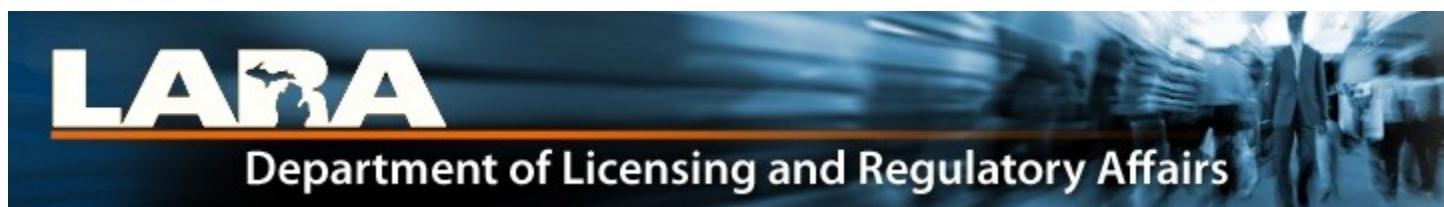
## **House and Senate: (Legislative Branch)**

The house and senate create, debate and vote on laws to govern the building industry. They also approve all appointments and review the operations of LARA (Department of Licensing and Regulatory Affairs).



## **Department of Licensing and Regulatory Affairs: (LARA)**

The Michigan Department of Licensing and Regulatory Affairs is composed of energy, labor and economic development agencies and commissions that promote job creation and economic growth in Michigan. It centralizes and streamlines the state's job development, workforce development, and economic development functions under one department. The director is appointed by the governor and his/her staff. The function of the director is to investigate complaints, and to approve or decline license applications based on the recommendations of the board.



## **Board of Residential Builders and M & A Contractors**

The Board is comprised of six licensed builders (4 residential builders and 2 M & A builders) and three members of the general public (one of whom must be a residential building inspector). The governor appoints board members with the consent of the senate.

Board members can serve two 4-year terms. The functions of the Board are:

- Create rules to help the board fulfill its duties so they do not conflict with Michigan law.
- To help the director interpret those laws.
- To set minimum standards for occupations.
- To assess penalties for violation of the laws.

## **Bureau of Commercial Services**

This bureau is responsible for assuring that the more than 335,000 licensees for 26 different commercial occupations meet the minimum standards for operating in Michigan. The bureau maintains public records of 1,250,000 business entities; it issues licenses, and conducts investigations to ensure that the people and businesses performing services or conducting business are operating legally and competently. Ultimately, the function of the bureau is to fulfill the administrative needs of the Director and the Board.

### **Licensing Division:**

The Licensing Division is responsible for determining eligibility for examination and licensure; monitoring licensee compliance with continuing education requirements, and providing administrative support to the boards. It also oversees the administration of examinations to those professions that have an examination requirement.

### **State Building Inspector:**

The state inspector enforces Michigan Residential Code 2009. He/she can be called upon by LARA to investigate a complaint.

### **Local Building Inspector:**

The local inspector enforces state codes and local ordinances.

**Customers:**

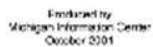
The customers are Residential Builders and M & A Contractors.

**State of Michigan Government Websites**

♦ The Governor: [www.michigan.gov/lara](http://www.michigan.gov/lara)

♦ Find your Senator at: <http://senate.michigan.gov>

<http://www.house.mi.gov/mhrpublic/>





## 2001 Apportionment Plan



[www.michigan.gov/lara](http://www.michigan.gov/lara)

♦ Bureau of Commercial Services, Licensing Services,  
Residential Builders and Maintenance & Alteration  
Contractors

[www.michigan.gov/builders](http://www.michigan.gov/builders)

♦ Bureau of Construction Codes

[www.michigan.gov/bcc](http://www.michigan.gov/bcc)

♦ Energy Office of Michigan

[www.michigan.gov/energyoffice](http://www.michigan.gov/energyoffice)

♦ Renewal with NO address change:

<https://mylicense.mdch.state.mi.us/MyLicenseEnterpriseren>

♦ Renewal WITH an address change:

<https://mylicense.mdch.state.mi.us/MyLicenseEnterpriseDle>  
[g](https://mylicense.mdch.state.mi.us/MyLicenseEnterpriseDle)

♦ Bureau of Commercial Services,

Check a Licensee's License:

[www.michigan.gov/builders](http://www.michigan.gov/builders)

(look on the right of page for Check a License)

♦ Bureau of Commercial Services, Licensing Services,  
Residential Builder Board Final Orders:

[www.michigan.gov/builders](http://www.michigan.gov/builders) (look at bottom of page for **Final Orders**)

♦ **Free Annual Credit Report per the Federal Fair Credit Reporting Act (FCRA)**

<http://www.annualcreditreport.com>

# Business of Building



## **OCCUPATIONAL CODE**

**ARTICLE I**

**ARTICLE II**

**ARTICLE III**

### **Michigan Department of Licensing and Regulatory Affairs**

#### ***Learning Objectives***

***Define the powers and duties of certain departments, boards and agencies in the Michigan Department of Labor and Economic Growth.***



## General Information:

All of the following laws and rules are pertinent to the State of Michigan. The state sets minimum laws and rules that we must comply with. Your local governing authority may and probably has more restrictive laws and rules. You must be familiar with and comply to local ordinances and educate yourself before embarking on any project. Examples of local governing authorities:

- A. Cities
- B. Villages
- C. Townships
- D. Counties

Other organizations that may have regulations that affect your project:

- ◆ Association by-laws (rules)
- ◆ Site Condo by-laws (rules)
- ◆ Sub-division by-laws (rules)
- ◆ Neighborhood Associations by-laws (rules)
- ◆ Renaissance zone by-laws (rules)
- ◆ Deed restrictions



## **ARTICLE 1**

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### **Definitions:**

"**Board**" means, in each article which deals with a specific occupation, the agency created in that article composed principally of members of the regulated occupation. In all other contexts, board means each agency created under this act.

"**Censure**" means an expression of disapproval of a licensee's or registrant's professional conduct, which conduct is not necessarily a violation of this act or a rule promulgated or an order issued under this act.

"**Competence**" means a degree of expertise which enables a person to engage in an occupation at a level which meets or exceeds minimal standards of acceptable practice for the occupation.

"**Complaint**" means an oral or written grievance.

"**Controlled substance**" means a drug, substance, or immediate precursor as set forth in section 7212, 7214, 7216, 7218, or 7220 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7212, 333.7214, 333.7216, 333.7218, and 333.7220 of the Michigan Compiled Laws, not excluded pursuant to section 7227 of Act No. 368 of the Public Acts of 1978, being section 333.7227 of the Michigan Compiled Laws.

"**Department**" means the department of commerce (currently known as the Department of Licensing and Regulatory Affairs).

"**Director**" means the director of the department of commerce (currently known as Department of Licensing and Regulatory Affairs) or an authorized representative of the director of the department of commerce (currently known as Department of Licensing and Regulatory Affairs).

"**Disability**" means an infirmity that prevents a board member from performing a duty assigned to the board member.

**"Files"** means the records, memoranda, opinions, minutes, and similar written materials that were formerly in the physical dominion of a board abolished by this act and the records, memoranda, opinions, minutes, and similar written materials of a board created under this act.

**"Formal complaint"** means a document that states the charges of each alleged violation and is prepared by the department or the department of attorney general after a complaint has been received by the department.

**"General public"** means each individual residing in this state who is 18 years of age or older, other than a person or the spouse of a person who is licensed or registered in the occupation or who has a material financial interest in the occupation being regulated by the specific article in which the term is used.

**"Good moral character"** means good moral character defined in section 1 of Act No. 381 of the Public Acts of 1974, being section 338.41 of the Michigan Compiled Laws.

**"Incompetence"** means a departure from, or a failure to conform to, minimal standards of acceptable practice for the occupation.

**"Knowledge and skill"** means the information, education, practical experience, and the facility in applying that information, education and practical experience.

**"License"** means the document issued to a person under this act which will enable that person to use a designated title and practice an occupation, which practice would otherwise be prohibited by this act. License includes a document issued by the department which permits a school, institution, or person to offer training or education in an occupation or which permits the operation of a facility, establishment, or institution in which an occupation is practiced. License includes a permit or approval.

**"Licensee"** means a person who has been issued a license under this act.

**"Limitation"** means a condition, stricture, constraint, restriction, or probation attached to a license or registration relative to the scope of practice including the following:



***a. A requirement that the licensee or registrant perform only specified functions of the licensees or registrants occupation.***

***b. A requirement that the licensee or registrant perform the licensees or registrants occupation only for a specified period of time.***

***c. A requirement that the licensee or registrant perform the licensees or registrants occupation only within a specified geographical area.***

***d. A requirement that restitution be made or certain work be performed before a license or registration is issued, renewed, or reinstated.***

***e. A requirement that a financial statement certified by a person licensed as a certified public accountant be filed with the department at regular intervals.***

***f. A requirement which reasonably assures a licensees' or registrants' competence to perform the licensees' or registrants' occupation.***

***g. A requirement that all contracts of a licensee or registrant be reviewed by an attorney.***

***h. A requirement that a licensee or registrant have on file with the department a bond issued by a surety insurer approved by the department or cash in an amount determined by the department.***

***i. A requirement that a licensee or registrant deposit***



***money received in an escrow account which can be disbursed only under certain conditions as determined by the licensee or registrant and another party.***

***j. A requirement that a licensee or registrant file reports with the department at intervals determined by the department.***

**"Occupation"** means a field of endeavor regulated by this act.

**"Person"** means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those legal entities. Person includes a department, board, school, institution, establishment, or governmental entity.

**"Physical dominion"** means control and possession.

**"Physician"** means that term as defined in section 17001 and section 17501 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.17001 and 333.17501 of the Michigan Compiled Laws.

**"Probation"** means a sanction which permits a board to evaluate over a period of time a licensee's or registrant's fitness to practice an occupation regulated by this act.

**"Public access"** means the right of a person to view and copy files pursuant to the freedom of information act, Act No. 442 of the Public Acts of 1976, as amended, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

**"Registrant"** means a person who is registered under this act.

**"Registration"** means the document issued to a person under this act which will enable that person to use a designated title, which use would be otherwise prohibited by this act.

**"Rule"** means a rule promulgated under this act and pursuant to the administrative procedures act of 1969, Act No. 306 of the

Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

"**State**" means the District of Columbia or a commonwealth, state, or territory of the United States.

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*NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>*

## **ARTICLE 2**

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### **339.201**

***Key Point:***

♦ ***The director is appointed by the governor. His/her job is to investigate licensees against whom a complaint has been filed, and to qualify new applicants.***

### **339.202**

Applicants must apply on the application form provided by the Department. All licenses are subject to an expiration date--**NO EXCEPTIONS!**

### **339.203**

It is possible for a person to be granted a license without passing the written test. If a person is having difficulty passing the written test they can request an oral test. The Department can approve an applicant this way.

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**

***Key Point:***

***♦ A renewal for a license must be submitted on the appropriate application form on or before the expiration date. The fee must be included and applicants must meet the requirements for renewal. Renewals are the responsibility of the licensee! Be sure to notify the state of any address changes.***

If a person does not meet the requirements for renewal, they can request a hearing before the Board.

**Example:** A person who does not meet the requirements for renewal because of a past disciplinary action during the previous license cycle and the Department denies the renewal request.

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.

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 implement these (Articles 1-6) written laws.

### **339.206**

The Department and the Board review and approve the content of the examination or other test.

The Department has the responsibility to administer the test, but it can delegate this to an outside source, which is currently **PSI Examination Services**.

***Key Point:***

♦ ***The department has the responsibility to administer the test, but it can delegate this to an outside source, which is currently PSI Examination Services.***

### **339.207**

The Board must recommend or grant approval to a school offering training in the construction industry (covered in Section 313 and 314). This includes Continued Education. The Department and Board have 90 days to first recommend and then approve an application to provide education services.

### **339.208**

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

### **339.209**

The Department provides the administrative services needed to implement the actions of the Board. It also appoints the administrative staff. The Department can hire, fire, promote, demote or transfer staff members.

### **339.210**

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**

***Key Point:***

♦ ***There are no temporary licenses issued in the construction industry--there are, however some exceptions to this law.***

### **339.214**

An individual from another country who is applying for a license must provide proof of the proper education or experience, and if that proof is unavailable from the foreign country, it is possible to qualify by:

-A sworn statement provided by the applicant stating the education or experience obtained.

-A governmental official's sworn statement of the unavailability of these records.

# Progress Check

- What is the difference between the Department and the Board?
- Name some conditions that could be attached to a "limitation" on one's license.

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

## **ARTICLE 3**

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### **339.301**

#### ***Key Point:***

***♦ The Residential Builders and Maintenance & Alteration Contractors Board shall contain nine total members. Six of them must hold a license as a builder or a maintenance & alteration contractor. Three 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. Five members constitute a quorum.)

### **339.302**

The governor shall appoint Board members with the approval of the senate.

### **339.303**

***Key Point:***

♦ ***The term of the Board members is four years. The maximum number of terms is two.***

### **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**

***Key Point:***

♦ ***The Board must meet at least 2 times per year. Files of the Board are available to the public.***

### **339.306**

The Board elects a chairperson and a vice chairperson each year.

The Board can fill a vacancy in the board for the balance of a one year term.

The Board can adopt by-laws to help regulate its internal affairs.

The Board shall provide an annual report to the Department of its activities, or upon an order from the director.

### **339.307**

The Board shall be created within the Department.

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**

The Board recommends educational course providers to the Department.



Before the Board recommends an educational course provider, they must determine 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**

***Key Point:***

***♦ The Board develops or adopts the test required by these laws to qualify for licensure. Questions developed by the Board are closed to the public.***

The qualification standards must provide for persons with special needs or a unique qualification that could not be made evident through a written exam. For example: A person with a reading disability can request a reader for the exam; or a person not able to pass the written test can request an oral test in order to prove their qualifications.

### **339.317**

The Board that has been abolished must provide all files to the Department.

The successor board shall have the right to use the equipment and office space of the previous board.

## Progress Check

- Describe the members of the Board, and how long they can serve.
- How is the state licensing exam developed?

# Business of Building



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## **ARTICLES 4-6, RULES & REGULATIONS**

**ARTICLE IV**

**ARTICLE V**

**ARTICLE VI**

### ***Learning Objectives***

***Describe the rules, penalties and fines as they pertain to the regulations surrounding the building and construction industry.***

**LARA**

Department of Licensing and Regulatory Affairs

## **ARTICLE 4**

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at***

***<http://www.legislature.mi.gov/>***

### **339.401**

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

### **339.402**

#### **Definitions.**

**"Expiration date"** means the date prescribed in rules promulgated by the department in accordance with section 202(2).

**"Reinstatement"** means the granting of a license or registration, with or without limitations or conditions, to a person whose license or registration has been revoked.

**"Relicensure"** means the granting of a license to a person whose license has lapsed for failure to renew the license within 60 days after the expiration date.

**"Re-registration"** means the granting of a registration to a person whose registration has lapsed for failure to renew the registration within 60 days after the expiration date.

### **339.403**

Companies under contract to provide services to administer these laws can collect fees. For example: PSI collects its fee to provide the qualifying test.

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**

***Key Points:***

- ***Fees must be paid before an exam is given.***
- ***Exam no-shows forfeit the exam fee.***
- ***People who fail may retake the exam after paying another fee***

***Note: The current provider PSI administers the test every week of the year.***

The Department must provide the deadlines in which applications must be received in order to be scheduled for an exam.

### **339.409**

License fees must be received in order for a license to be issued.

License fees are established on an annual basis but may be collected on a bi-annual or tri-annual basis.

If the Department receives an application that cannot be processed because it is incomplete, the Department will send a notice of an incomplete application. The application will expire after one year.

## 339.411

### ***Key Points:***

- ***If you let your license expire, you are unlicensed on the day following the expiration date.***
- ***A person who lets their license expire for more than 60 days must reapply. There is no requirement to retest or take additional courses if the license has not been expired for more than 3 years.***
- ***An application is considered complete if the form is totally filled out, proof of pre-licensure is included, and the license fee is included.***

If you let your license expire, you are unlicensed on the day following the expiration date. **No business can be conducted after that date.**

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.

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. The license has not been 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 completed at least 1 year of required Continued Education within the last 12 months.

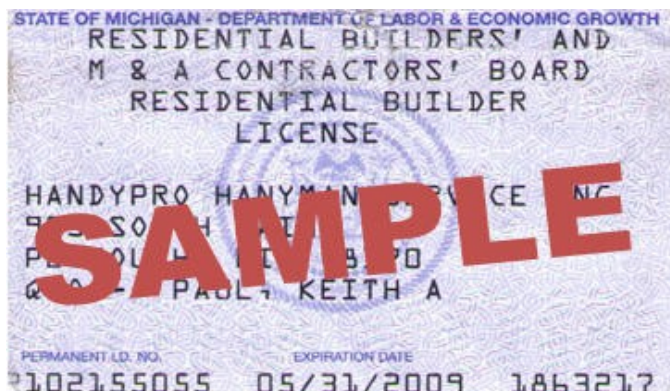
After 3 years of expiration, the applicant must re-qualify by passing the test and possibly taking Continued Education or the entire 60 hour pre-licensure requirement.

**Reinstatement:** Reinstatement happens when the licensee has had their license revoked.

The applicant must file a reinstatement application and pay the fee. They must 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.

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 within 30 days.

**Completed application** means:

- A. The application form is complete
- B. The proof of required pre-licensure education is included
- C. The license fee is included
- D. Copy of drivers licenses

The Department has 90 days to complete the application from the date it is considered a completed application.

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.

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.

**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 the Department has 90 days to complete an application. Without the time limit, they won't have to refund your application fee as provided under Subsection 8.

**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.

**NOTE:**



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

### Progress Check

- What constitutes a "completed" application?
- What is the difference between reinstatement and re-licensure?

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## **ARTICLE 5**

***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### **339.501**

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

**"Complainant"** means a person who has filed a complaint with the Department alleging that a person has violated this act or a rule promulgated or an order issued under this act. If a complaint is made by the Department, the director shall designate 1 or more employees of the Department to act as the complainant.

**"Respondent"** means a person against whom a complaint has been filed who may be a person who is or is required to be licensed or registered under this act.

### **339.502**

***Key Point:***

- ***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 complainant.***

If the Department made the complaint, the director will appoint a person within the Department to act as the complainant.

### **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**

Within 30 days of receipt of the complaint, the Investigative Unit will make a report to the director. The director can approve extensions:

-If the investigation does not disclose a violation, the complaint shall be closed. The person filing the complaint will be notified of their finding.

***Key Points:***

***• If the investigation uncovers a violation, the Department or the Attorney General will take appropriate action which may include:***

- 1. a formal complaint***
- 2. a cease and desist order***
- 3. notice of suspension***
- 4. a citation***

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**

***Key Point:***

***• 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 license.***

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

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.

An administrative law examiner will grant the relief of a suspension order unless there is sufficient evidence that a threat to the public remains.

These records will become part of the records in the complaint file.

### **339.506**

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

***Key Point:***

- ***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 local authority may make an arrest.***

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 locals 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**

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.(informal) 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.

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.

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.

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

## 339.510

### ***Key Point:***

- ***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

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.

The claimant and respondent will receive a copy of the hearing report.



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**

After receiving the hearing report, the Board has 60 days to determine the penalties.

If the Board fails to determine the appropriate penalty with 60 days, the director may determine the penalty and issue a final order.

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**

***Key Point:***

- ***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**

If a license is issued with limitations placed 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.

The Department shall reply to this petition in writing within 15 days.

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.

### **339.551**

**"Employee of the department"** means an individual employed by the department or a person under contract to the department whose duty it is to enforce the provisions of this act or rules promulgated or orders issued under this act.

**"Citation"** means a form prepared by the Department pursuant to section 553.



### **339.553**

If an employee of the Department observes or deduces from an investigation non-compliance with a law or rule, they can issue a citation.

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**

Respondent has 30 days to notify of either accepting or rejecting the conditions of the citation.

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 in all final orders as June 1st 2008 will be disclosed to the public.

Final order information can be found at:

<http://www.michigan.gov/lara>



Click on Verify a License first, then  
Click on Final Orders to see the detail of the final order.

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, a 1-page explanation can be prepared. The Department will disclose it along with the disclosure of the citation.

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**

***Key Point:***

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

### **Progress Check**

- What is the difference between a complainant and a respondent?
- List 3 options a respondent will be offered by the Department after being served a complaint.

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## **ARTICLE 6**

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### **339.601**

#### ***Key Points:***

- ***A person will not engage or attempt to engage in contracting construction activities without being licensed.***
- ***Suspended, revoked or lapsed licenses are considered unlicensed.***
- ***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.***

1. A person will not engage or attempt to engage in construction contracting activities without being licensed.
2. Schools must be licensed
3. Suspended, revoked or lapsed licenses are considered unlicensed.
4. A person, school or institution that violates the rule is guilty of a misdemeanor.
5. Residential Builders and M&A contractors who engage or attempt to engage in contracts without being licensed are subject to:
  - A. First Offence: A misdemeanor punishable by a fine of not less than \$5000, not more than \$25,000 or 1 year jail time or both.
  - B. Second Offence: Same as above , but could spend 2 years in jail, or both.
  - C. If a serious injury or death occurs on a project where a license is required and the contractor isn't licensed, the fine is still the same but the jail time increases to 4 years.



A violation of this act requires that if the complainant has suffered a financial loss, restitution must be made based upon the facts found.

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 contractor for actual costs and attorney fees.

This Act is not applicable to:

- A. Interior Designers
- B. Building Designers

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:

1. A licensee
2. A competitor
3. A neighbor
4. Local authorities
5. A private association
6. The Board
7. The Department
8. A supplier
9. A customer

The Director or Board can order an investigation of the offense.

The Department and the Department of Attorney General can seize property determined to be proceeds of the crime.

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.

Courts must notify the department of convictions by mail, fax or email.

### **339.602**

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

- A. Limitations
- B. Suspension

- C. Denial 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.  
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



### **339.604**

The Department may bring an action including mediation or other dispute resolution in the name of the people of the state.

The Attorney General can intervene in and prosecute all cases if necessary

The Department can bring any civil, criminal or administrative action to enforce Section 601.

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 is determined to be proceeds of a crime.

#### **Progress Check**

- List the penalties for violating an Act, Rule or Order.
  - What are the violations that will result in the Department suspending a license?

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# Business of Building



1

## **Article 24**

**LICENSING**

**CONTINUING ED**

**COMPLAINTS**

### ***Learning Objectives***

***Identify the licensing procedures and requirements for contractors.***

***Describe continuing education requirements.***

***Explain how complaints/hearings are handled by the state.***

**LARA**

Department of Licensing and Regulatory Affairs



## **Residential Builders and Residential Maintenance and Alteration Contractors**

### **339.2401 Definitions.**

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

**“Residential builder”** means a person engaged in the construction of a residential structure or a combination residential and commercial structure who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, wrecking of, or demolition of, a residential structure or combination residential and commercial structure; a person who manufactures, assembles, constructs, deals in, or distributes a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged, or shell housing; or a person who erects a residential structure or combination residential and commercial structure except for the persons own use and occupancy on the persons property.



**“Residential maintenance and alteration contractor”** means a person who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination residential and commercial structure, or building of a garage, or laying of concrete on residential property, or who engages in the purchase, substantial rehabilitation or improvement, and resale of a residential structure, engaging in that activity on the same structure more than twice in 1 calendar year, except in the following instances:

- (i)** If the work is for the persons own use and occupancy.
- (ii)** If the rehabilitation or improvement work of residential type property or a structure is contracted for, with, or hired entirely to be done and performed for the owner by a person licensed under this article.
- (iii)** If work is performed by a person employed by the owner to perform work for which the person is licensed by the state.

***Key Point:***

- ***A Residential Builder and Residential Maintenance and Alteration Contractor is: a person who engages in the purchase, substantial rehabilitation or improvement, and resale of a residential structure; engaging in that activity more than twice in 1 calendar year, except if the work is for that person's personal use and occupancy, or the owner hires the work to be done entirely by a licensed builder.***

**“Residential structure”** means a premises used or intended to be used for a residential purpose and related facilities appurtenant to the premises, used or intended to be used, as an adjunct of residential occupancy.

**“Salesperson”** means an employee or agent, other than a qualifying officer, of a licensed residential builder or residential maintenance and alteration contractor, who for a salary, wage, fee, percentage, commission, or other consideration, sells or attempts to sell, negotiates or attempts to negotiate, solicits for or attempts to solicit for, obtains or attempts to obtain a contract or commitment for, or furnishes or attempts or agrees to furnish, the goods and services of a residential builder or residential maintenance and alteration contractor, except a person working for a licensed residential builder or residential maintenance and alteration contractor who makes sales which are occasional and incidental to the persons principal employment.



**Key Point:**

♦ *A person working for a licensed builder or licensed M&A contractor **who makes sales which are occasional and incidental to the person's principal employment** is NOT considered a "salesperson" under the law.*

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## **LICENSING**

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### **Salesperson License**

Explanation from the state web site:

Anyone who, for compensation, solicits or secures business for a licensed Builder or licensed M&A Contractor must be licensed to that Builder or M&A Contractor as a Residential Builder or M&A Contractor Salesperson.

This includes:

- 1.** Commissioned salespersons
- 2.** Licensed builder or M&A contractors who refer a customer to another builder or M&A contractor for a referral fee
- 3.** Staff at home centers who both sell a product and contract for its installation on behalf of the licensee
- 4.** Individuals working in model homes to solicit customers for future construction.

A salesperson may only be licensed to one builder or M&A contractor at a time; serving as a representative for several builders or M&A contractors is not permitted by law.

### **“Wages”**

Means money paid or to be paid on an hourly or daily basis by an owner, lessor, or occupant of a residential structure or combination residential and commercial structure as consideration for the performance of personal labor on the structure by a person who does not perform or promise to perform the labor for any other fixed sum, price, fee, percentage, valuable consideration, or other compensation and who does not furnish or agree to furnish the material or supplies required to be used in the performance of the labor or an act defined in subdivision (a) or (b).



***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### **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

***Key Point:***

***♦ Total membership is comprised of 6 licensed contractors and 3 members of 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 licensed residential builders or licensed M&A contractors, except salespeople
- F.** When the amount of work to be done is \$600 or less including labor and materials. (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 contractors are licensed under a separate law
- I.** HVAC contractors are licensed under a separate law.

**339.2404**

**Qualifying for an M&A License**

The department will require, from a person or business applying for a license, the below information from the following:

- A.** Applicant
- B.** Licensee
- C.** Partner
- D.** Trustee
- E.** Director
- F.** Officer
- G.** Member
- H.** Shareholder

**Required information:**

**A.** Evidence of good moral character:

- i.** Misdemeanors
- ii.** Felonies
- iii.** Disciplinary actions

**B.** Financial stability

**C.** Copy of driver's license or state I.D. card

**All applicants must pass an exam.**

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

Basement Waterproofing

Carpentry

Concrete

Excavation

Gutters

House Wrecking

Masonry

Painting/Decoration

Roofing

Screen/Storm Sash Install

Siding

Swimming Pool Install

***Key Points:***

- ♦ ***A Residential Builders License allows you to practice in all 14 trades.***
- ♦ ***A Maintenance & Alteration License allows you practice only the trade(s) you select.***
- ♦ ***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:

<b>Drywall</b>	<b>Landscaping (no excavation)</b>
<b>Plaster and Lath</b>	<b>Sprinklers</b>
<b>Awnings</b>	<b>Paver without Mortar</b>
<b>Fences</b>	<b>Asphalt Paving</b>
<b>Sewer Lines</b>	<b>House Moving</b>
<b>Water Lines</b>	<b>Carpet/Vinyl (no wood or laminate)</b>
<b>Septic Systems</b>	

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).



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.

A licensee must keep records for at least **5** years of Prelicensure and Continued Education requirement activities.

***Key Points:***

- ♦ ***The license term is a 3 year cycle.***
- ♦ ***A licensee must keep records for at least 5 years of Continued Education requirement activities.***

**Contractors must provide their license number on all contracts and all change orders.**

Persons applying for a residential builders license or M&A contractor license must complete **60 hours** of approved courses that consist of at least 6 hours in each of the following areas:

- A.** Business Management, Estimating and Job Costing
- B.** Design and Building Sciences
- C.** Contracts, Liability and Risk Management
- D.** Marketing and Sales
- E.** Project Management
- F.** Michigan Residential Codes
- G.** MIOSHA Safety Standards

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



**Key Points:**

- ◆ *Licensees who have held their license for more than 6 years must take 3 hours of continuing education within the 3 year license cycle.*
- ◆ *New licensees must complete at least 3 hours of continuing education in every calendar year for the first 6 years of their licensure--with a total of 21 hours per 3 year cycle.*

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**CONTINUING EDUCATION requirements are as follows:**

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

At least 3 hours must be devoted to:

- A.** Building Codes and Laws
- B.** MIOSHA Safety
- C.** Changes in Construction and Business Management Laws.

**Licensees who have had a violation have to complete the 21 hour requirement.**

A licensee can take any course that has been approved by the Department to fulfill the Continued Education requirement.

It is up to the Department to qualify the instructor for Continued Education.

The subject matter for prelicensure 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.

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.

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

The **3** hours must be devoted to:

- A.** Building Codes and Laws
- B.** MIOSHA Safety
- C.** Changes in Construction and Business Management Laws.

Teaching Continued Education counts toward time requirements.

**The Department may conduct an audit to determine compliance with Continued Education requirements.**

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.

***Key Point:***

***♦ 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 who is considered 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**

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.

If the qualifying officer's license gets suspended, the company's license is also suspended, and vice versa.

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.

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.

***Key Point:***

♦ ***Corporations, LLCs Partnerships 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.***

### **339.2406**

Non-residents 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 subject 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.

CONSENT TO SERVICE OF PROCESS			
<small>AUTHORITY: P.A. 299 of 1980, as amended  COMPLETION: Mandatory  PENALTY: Failure to complete may result in denial of your application.</small>			
<small>Information provided on this form may be released to the public in accordance with the Freedom of Information Act, 1976 PA 442, as amended.</small>			
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.	
<p><b>KNOW ALL PERSONS BY THESE PRESENTS:</b></p> <p>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 &amp; 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.</p>			
Signed in the City of _____, State of _____			
this _____ day of _____, 20____. Signed _____ <div style="text-align: right; margin-right: 100px;"><small>Name of Applicant</small></div>			
By _____ <div style="text-align: right; margin-right: 100px;"><small>if an Organization</small></div>			
Title _____			
State of _____			
County of _____			
Subscribed and sworn before me this _____ day of _____, 20____			
<div style="text-align: right;">Signature of Notary Public _____</div>			
My commission expires _____ County of _____ State of _____			
<b>If a Corporation, execute and attach a resolution authorizing Consent to Service of Process.</b>			

### **339.2407**

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.

Employers make the applications for a salespersons' license.

### **339.2409**

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

### **339.2410**

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

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

## **COMPLAINTS**

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### **339.2411**

Persons making complaints against Residential Builders or M&A contractors must do so within **18 months** of the **LATEST** of the following:

- A.** Completion
- B.** Occupancy
- C.** Purchase

- D. Occupancy Permit
- E. Closing



***Key Point:***

***♦ 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.***

**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 the 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 the State of Michigan of a 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 to work for unlicensed companies.
- L.** To dissolve a company without meeting all financial obligations.
- M.** For workmanship not meeting Michigan Residential Code.

If companies knowingly violate the **Asbestos Abatement Contractors Licensing Act**, their license may be suspended or revoked.

**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 must defend themselves and give proof and reasons for why the problems were not corrected.
- 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 procedure. This needs to be initiated by the licensee, with notice sent to the homeowner within 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 if 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.



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.

A verified complaint means the allegations in the complaint have been confirmed.

***Key Point:***

♦ ***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.*

### **339.2411A**

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

[www.michigan.gov/builders](http://www.michigan.gov/builders)

### **339.2412**

**Contractors who are required to be licensed by law have no lawful recourse to collect funds if they are not licensed.**

A person filing a complaint against a contractor who has made a contractual arbitration agreement must use that method.

**Unlicensed contractors who are required to be licensed can not take legal action or impose a Lien.**

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.**

(Any affected person can bring action to collect for damages or restitution).

The fine shall be **paid to the Prosecuting Attorney** or to the Attorney General bringing the action.

***Key Points:***

- ♦ ***Contractors who are required to be licensed by law have no lawful recourse to collect funds if they are not licensed!***
- ♦ ***Unlicensed contractors who are required to be licensed cannot take legal action or impose a lien.***
- ♦ ***A Prosecuting Attorney or Attorney General can bring action for a civil violation against a builder for operating without a license. Fines will not be less than \$5,000 or more than \$25,000, plus any civil damages or restitution. The fine shall be paid to the prosecuting attorney or the Attorney General bringing action.***

## **Progress Check**

- Describe the continuing education requirements for new licensees.
- What rights do unlicensed contractors have when trying to recover lost payment/funds?

# Business of Building



1

## **ADMINISTRATIVE RULES**

**LICENSES**

**COMPLAINTS**

**REFUNDS/FEES**

### ***Learning Objectives***

***Describe fees, licensing, complaints and disciplinary actions as they pertain to licensed builders.***

**LARA**

Department of Licensing and Regulatory Affairs

## Residential Builders and Maintenance & Alteration Contractors

***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### 338.1511

#### DEFINITIONS

"**Act**" means 1980 PA 299, MCL 339.101, known as the occupational code.

"**Board**" means the state residential builders and maintenance and alteration contractors board.

"**Builder**" means a residential builder as defined by the act.

"**Contractor**" means a residential maintenance and alteration contractor as defined by the act.

"**Department**" means the Department of Licensing and Regulatory Affairs.

"**Director**" means the Director of Licensing and Regulatory Affairs.

#### LICENSES

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### 338.1521

**Applications for licenses.**

License applications must include addresses of all individuals, partners, officers or members, and the physical 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.

**Key Point:**

♦ **License applications must include addresses of all individuals, partners, officers or members, and the physical address of the office of the company.**

Applicants must provide the proper documentation verifying their method of legally organizing as a company, including:

**A. Sole Proprietorships:** Certificate of Assumed Name (only if you have one)

**B. Partnerships:** Copy of currently filed Certificate of Co-partnership issued by the County Clerk.

**C. Limited Liability Companies:** Copy of the Articles of Organization, Current Certificate of Good Standing and (if have) Certificate of Assumed Name

**D. Corporations:** Copy of the Articles of Incorporation, Current Certificate of Good Standing and (if have) Certificate of Assumed Name

**E.** Any other documentation requested.

Foreign companies must submit evidence of authority to do business (Corporation and Securities Commission).

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.

If requested, the applicant shall submit the following within 60 days:

**A.** Cash Surety Bond

**B.** Financial Statement

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 will be forfeited.

**Key Points:**



- ♦ If requested, the applicant shall submit a credit report.
- ♦ The Department will check your credit report when you apply for your license.

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 the old license when new a one is received (both wallet and wall)

**Passing test scores are valid for 1 year from the date the test was taken.**

### **338.1524**

#### **Issuance**

Upon successful completion of all requirements, the license will be issued. The office address shall be printed on the license.

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.

### **338.1525**

#### **Salespeople**

Salespeople shall be licensed under builders or M&A contractors. They can only work under 1 contractor at a time.

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.

Salespeople shall be issued a license upon approval. Salespeople shall not begin selling until they receive their license.



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 as mentioned above.

Salespeople who transfer to a new business can have their new employer apply for a transfer of license.

## **338.1526**

### **Termination**

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.

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.

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.

#### **Key Points:**

- ◆ 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.
- ◆ 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.

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## **OPERATIONS OF LICENSES**

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### **338.1531**

#### **Place of Business**

Residential contractors must have an address of an actual office in Michigan where their business records are kept.

All business licenses shall be displayed in a conspicuous place in the office.

### **338.1532**

#### **Advertising**

No false advertising

Advertising must include individuals name or business name, license number, and business address in ALL ADVERTISING. If a builder hires a real estate broker to sell a home, the advertisement does not have to include the name of the builder.

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.

The use of displays, models or model installations shall portray the goods accurately so as not to be deceiving.

#### **Key Point:**

♦ **Advertising must include individual's name or business name, license number, and business address in ALL ADVERTISING. If a builder hires a real estate broker to sell a home, the advertisement does not have to include the name of the builder.**

### **338.1533**

#### **Agreements**

All agreements (CONTRACTS), or changes (CHANGE ORDERS), to the agreements shall be in WRITING and signed by both parties with copies provided to the customer.

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

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.

**Key Points:**

♦ **All agreements (contracts) or changes(change orders) to the agreements shall be in WRITING and signed by both parties with copies provided to the customer.**

♦ **Written agreements shall provide the following:**

- **Clear terms**
- **Specifications and plans (if applicable)**
- **Cost**
- **Type and amount of work to be done**
- **Type and quality of material to be used**

## **Records**

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.

### **338.1535**

## **Financial Statements**

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

### **338.1536**

## **Brokerage**

It is prohibited for a company to perform under or to accept a contract that was procured by an unlicensed salesperson.

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## **COMPLAINTS AND HEARINGS**

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### **338.1551**

## **Filing Complaints**

Complaints shall be submitted on the specified form.

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.



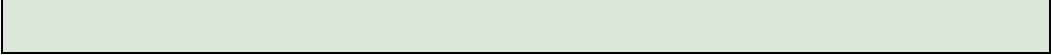
If the contractor acknowledges the complaint as justified, they shall correct the complaint within a reasonable time.

If the contractor does not acknowledge the complaint as justified, the Department will respond to the complainant in the area of disagreement.

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.

**Key Point:**

♦ 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 in their dealing.



Standard of Construction shall be in accordance with Michigan Residential Code 2006.

### **338.1552**

#### **Investigative Hearings**

The Department, after an investigation, may request the licensee to 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.

### **338.1553**

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.

The Department can dismiss a complaint if it is resolved, settled, without merit, or for lack of evidence of a violation.

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.

### **338.1555**



**Key Point:**

♦ As of Aug 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.

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

## **Progress Check**

- List which items must be clearly stated in a written agreement.
- What must a contractor who wants to add additional trades do?

### **339.1003**

Residential Builders and Maintenance & Alteration Contractor licenses shall expire on May 31.

The license will expire every 3 years.

## DISCIPLINARY PROCEEDINGS

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### **339.1701**

**"Adjournment"** means an adjournment, stay, continuation, or delay of a contested case hearing at any time after the issuance of a formal complaint.

**"Administrative procedures act"** means 1969 PA 306, MCL 24.201, et seq.

**"Compliance conference"** means the conference provided for in accordance with section 92 of the administrative procedures act, MCL 24.292.

**"Days"** means calendar days.

**"Department"** means the Department of Licensing and Regulatory Affairs.

**"Informal conference"** means the conference defined in section 504 of the occupational code, MCL 339.504, but does not mean a compliance conference provided in accordance with section 92(1) of the administrative procedures act, MCL 24.292.

**"Licensing law"** means a law under which the department issues a license, registration, or other authorization to practice an occupation or profession or render other services, and includes the occupational code.

**"Occupational code"** means 1980 PA 299, as amended, MCL 339.101 et seq.

**"Party"** means a person, agency, or designated agent of the department named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case.

**"Presiding officer"** means an administrative law judge who is employed by the state office of administrative hearings and rules (SOAHR) who is designated by SOAHR to conduct a contested case hearing.

**"Respondent"** means a person against whom a formal complaint has been issued.

**"Lapsed"** license or registration means a license or registration a person did not renew, as defined in section 411 of the occupational code, MCL 339.411.

**"Expired"** license or registration means a license or registration a person failed to renew on or before the expiration date.

**"Revoked"** license or registration means that a person's authorization or privilege to engage in an occupation or profession regulated under the occupational code is terminated and shall not be restored, reinstated, or renewed, except that an application for a new license or reinstatement of a license may be considered by the department and board as permitted under the occupational code.

**"Suspended"** license or registration means that a person's authorization or privilege to engage in an occupation or profession regulated under the occupational code is temporarily withdrawn and shall not be restored, reinstated, or renewed until a term, condition, or requirement imposed upon the person by the department or board has been met or until a specified period of time has elapsed.

**"Surrendered"** license or registration means a license or registration that a person voluntarily returns to the department, or a license or registration that was returned to the department before, during, or after an investigation as defined in article 5 of the occupational code, MCL 339.501 to MCL 339.559.

### **339.1703**

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

### **339.1705**

If a contractor has broken a law before they become licensed, the Department can take action on the offense.

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 close
- C.** Until the licensee is in full compliance with all final orders issued

### **339.1706**

A change of address must be made within 30 days of the change.

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



### **339.1709**

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.

### **339.1713**

Time limits work like this:

#### **Key Point:**

#### **♦ Time Limits work like this:**

- 1. You receive a certified letter from the Department and you sign for it on Monday.**
- 2. The letter states that you have 15 days to reply.**

**3. The first day of the 15 days is Tuesday.**

**4. If the 15th day falls on a Sat., Sun., or holiday, the 15th day is the next business day after the Sat., Sun., or holiday.**

### **339.1721**

The Department may combine several complaints against a contractor into one formal complaint.

The Department can withdraw a complaint at any time.

### **339.1726**

**Key Points:**

♦ **There is no rule that prohibits the parties involved in a complaint from attempting to settle their dispute on their own.**

♦ **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.**

There is no rule that prohibits the parties involved in a complaint from attempting to settle their dispute on their own.

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.

### **339.1731**

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.

Informal conferences held by the Department are held for the purpose of dispute resolution, not to collect evidence.

The Department can decide to adjourn an informal conference for good cause. (Adjourn means to suspend until another time.)

The Department decides if a case should go to a hearing.

### **339.1741**

Contractors can respond to a formal complaint with a letter.

Formal complaints can be changed. If a formal complaint is changed, more time may be given to the contractor to prepare a defense.

### **339.1743 through 339.1771**

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

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### **REFUND OF FEES**

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"**Department**" means the Department of Consumer and Industry Services (now the Department of Licensing and Regulatory Affairs).

**"Fee"** means a fee for a permit, license, registration, examination, reexamination, certificate, verification, transfer, publication, or change of address.

**"Incapacitated"** means an illness or injury which prevents a person from performing the occupation for which the person is licensed, registered, or certified.

**"Partial refund"** means a refund of the fee paid minus a service charge of \$15.00.



**338.943**

### **Refund of Fees**

The 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.



## Progress Check

- At a prehearing conference, the parties shall attempt, through agreement, to do what?
- Describe the format of a hearing, opening statement and closing statement?

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### STATE LICENSE FEE ACT (Excerpts)

***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

#### **P.A. 152 of 1979**

**AN ACT** to provide for the establishment and collection of fees for the regulation of certain occupations and professions, and for certain agencies and businesses; to create certain funds; and to prescribe certain powers and duties of certain state agencies and departments.

#### **338.2202**

#### **Definitions.**

"**Department**" means the Department of Consumer and Industry Services (now the Department of Licensing and Regulatory Affairs).

"**Occupational code**" means 1980 PA 299, MCL 339.101 to 339.2721 of the Michigan Compiled Laws.

### **338.2203**

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

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

### **338.2205**

With the exception of Rule 338.943, fees shall not be refunded.

The Department shall make rules concerning refunds following the laws of the state.

### **338.2206**

The late renewal fee is **\$20.00**.

### **338.2207**

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

### **338.2208**

A person requesting written verification as to whether or not a contractor is licensed will pay a fee of **\$5**.

Any additional written information requested about a licensee will be **\$15.00**.

### **338.2209**



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.

### **338.2210**

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

### **338.2239(1)**

The fees for a person licensed or seeking a license as a residential builder, M&A contractor, salesperson, company, and/or branch office for the **first time** (after June 1st 2008) are:

Application processing fee: **\$15.00**

Initial license fee is \$60/year for 3 years: **\$180.00**

Total for first 3 years: **\$195.00**

\$30.00 of the \$180.00 initial 3 year license fee will go to the builder enforcement fund. **This is a one-time per licensee payment to the builder enforcement fund.**

The fees for a person licensed or seeking a license as a residential builder, M&A contractor, salesperson, company, and/or branch office for all 3 year license cycles after the first cycle (after June 1st 2008) are:

Application processing fee: **\$15.00**

License fee is \$50/year for 3 years: **\$150.00**

Total for all 3 year periods after the first: **\$165.00**

\$15.00 of the \$150.00 3 year license fee will go to the builder enforcement fund. Every time you renew your license this payment is made to the builder enforcement fund.

**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 and Law/Practice and Trades

**M&A contractor exam: \$80.00**

Business and Law, 1 Trade

**(\$10.00** extra for additional trade)

Salesperson test **\$75.00**

**Key Points:**

♦ Application fees 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--\$60/year for 3 years=\$195.00.

♦ After that, in the next issuance, the cost will be \$50/year plus the \$15 application fee=\$165.00

♦ The examination fees charged by PSI are:

**1. Testing for both parts of the exam--Business and Law, Practice and Trades=\$100.00**

**2. M&A Contractor exam: Business and Law, 1 trade (\$10.00 extra for each additional trade)=\$80.00**

**3. Salesperson test=\$75.00**

### **338.2239(2)**

The builder enforcement fund is created in the state treasury and shall be administered by the department.

The department shall maintain the fund between \$750,000 and \$3,000,000.

If the fund goes above \$3,000,000 the \$15.00 per 3 year renewal fee shall be suspended.

If it goes below \$750,000 the \$15.00 per 3 year renewal fee shall resume.

Fund maintenance will begin in 2011

The department shall utilize the builder enforcement fund only:

- 1.** For the enforcement of Article 24 of the occupational code, regarding unlicensed activity.
- 2.** To reimburse the Attorney General for the reasonable cost of services provided to the Department.
- 3.** For expenses incurred in prosecutions for such unlicensed practices.
- 4.** For expenses incurred by the Prosecuting Attorney in conducting prosecutions of such unlicensed practices.

### **Occupational License for Former Offenders**

## **P.A. 381 of 1974**

### **Key Points:**

- ♦ 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**

Good moral character means when, as a requirement for licensure, the person is believed to be **honest and fair**.

### **338.42**

A person who has been found guilty of a criminal or civil offense must be given an opportunity to present the case that they would serve the public in an **honest, fair and open manner**, and 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**

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.

Criminal records that are furnished to the Board must be reviewed by the Director of the Department to insure that the information meets the required criteria.

**Key Point:**

♦ **The Director shall create and put into effect the decision making process that will determine if an applicant with a criminal background will likely serve the public in an honest, fair and open manner. The rules must 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.

## **Progress Check**

- Under what circumstances will the Department issue a partial refund?
- What does the phrase "good moral character" mean?

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## **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.

**Key Points:**

- ◆ **Builders and contractors are considered trustees of funds entrusted to them for the payment of materials and services.**
- ◆ **Fraudulent use is a felony--punishable by a penalty from \$100 to \$5,000 and 6 months to 3 years in jail.**

**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.

**Progress Check**

- How is a contractor convicted of fraud punished?

# Business of Building



1

## Construction Lien Act

NOTICES

SWORN STATEMENTS

CLAIMS OF LIEN

WAIVERS

### ***Learning Objectives***

***Explain how lien laws protect the rights and interests of both the builder and the consumer.***



### **Definitions:**

**“Actual physical improvement”** means the actual physical change or alteration of real property as a result of labor provided; pursuant

to a contract, by a contractor, subcontractor, or laborer which is readily visible and of a kind that would alert a person upon reasonable inspection of the existence of an improvement. Actual physical improvement does not include that labor which is provided in preparation for that change or alteration, such as surveying, soil boring and testing, architectural or engineering planning, or the preparation of other plans or drawings of any kind or nature. Actual physical improvement does not include supplies delivered to or stored at the real property.

**“Co-lessee”** means a person having an interest in real property, the nature of which is identical to that of the interest of the lessee who contracted for the improvement to the real property, whether the extent of such interest is identical or not.

**“Construction lien”** means the lien of a contractor, subcontractor, supplier, or laborer, as described in section 107.

**“Contract”** means a contract, of whatever nature, for the providing of improvements to real property, including any and all additions to, deletions from, and amendments to the contract.

**“Contractor”** means a person who, pursuant to a contract with the owner or lessee of real property, provides an improvement to real property.

**“Co-owner”** means a person having an interest in real property, the nature of which is identical to that of the interest of the owner who contracted for the improvement to the real property, whether the extent of such interest is identical or not.

**“Court”** means the circuit court in which an action to enforce a construction lien through foreclosure is pending.

**“Department”** means the Department of Licensing and Regulatory Affairs.

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

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

**“Fund”** means the homeowner construction lien recovery fund created in section 201.

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

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

**“Laborer”** means an individual who, pursuant to a contract with a contractor or subcontractor, provides an improvement to real property through the individual's personal labor.

**“Lessee”** means a person, other than the owner, who holds an interest, other than a security interest, in real property.

**“Lien claimant”** means a person having a right to a construction lien under this act.

**“Owner”** means a person holding a fee interest in real property or an equitable interest arising out of a land contract.

**“Person”** means an individual, corporation, partnership, sole proprietorship, association, other legal entity, or any combination thereof.

**“Project”** means the aggregate of improvements contracted for by the contracting owner.

**“Qualifying officer”** means an individual designated as a qualifying officer of the contractor or subcontractor in the records of the department under article 24 of the occupational code, 1980 PA 299, MCL 339.2401 to 339.2412.

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

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

**“Supplier”** means a person who, pursuant to a contract with a contractor or a subcontractor, leases, rents, or in any other manner provides material or equipment that is used in the improvement of real property.

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

**570.1107**

**GENERAL**

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at***

***<http://www.legislature.mi.gov>***

**Key Points:**

- Each contractor, subcontractor 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
- This lien is attached against the value of the entire property
- This claim may be settled by the foreclosure of the property in order to acquire the funds for payment
- A lien can be attached to the value of the entire property
- Lien claims also include earned interest from the time the claim is

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.

**filed and for the next 90 days**

This lien is attached against the value of the entire property.

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.

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.

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-owner's interest. When entering into a contract, make sure who the owners are at the county register of deeds.



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.

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

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## **570.1108(A)**

### **Notice of Commencement**

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#### **Key Points:**

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:**
  - **Legal description of the property**
  - **Name and address of the owner**
  - **Name and address of the owner of the land contract**
  - **Name and address of the designee**
  - **Name and address of the general contractor, if any, and the following caption that must be right below the line that provides the GC's name and**



address.

### Example:

NOTICE OF COMMENCEMENT	
State of Michigan	} §
County of <u>Ingham</u>	
<u>Harry Smith</u> , 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 5<sup>th</sup> day of April 2005

NOTARY PUBLIC:

Linda Block

(Signature/Printed Name)

My commission expires: January 31, 2006

Ingham County, Michigan.

570.1109

Subcontractors and suppliers must provide to the designee and the general contractor, if any, the Notice of Furnishing either personally or by certified mail within 20 days after first furnishing labor or materials. The date on the certified mail completes the service time limitation.

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.

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.

**Notice of Furnishing** shall be substantially the following form.

**Key Points:**

**Subcontractors and suppliers must provide to the designee and the general contractor, if any, the Notice of Furnishing either personally or by certified mail within 20 days after first furnishing labor or materials.**

**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?**

**NOTICE OF FURNISHING**

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

\_\_\_\_\_  
(address from notice of commencement)

Please take notice that the undersigned is furnishing to \_\_\_\_\_

\_\_\_\_\_  
(name and address of other contracting party)  
certain labor or material for \_\_\_\_\_

\_\_\_\_\_  
(describe type of work)  
in connection with the improvements to the real property described in the notice of  
commencement recorded in liber \_\_\_\_\_, on page \_\_\_\_\_,

\_\_\_\_\_  
records,  
(name of county)

\_\_\_\_\_  
or (a copy of which is attached hereto)

**WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE MICHIGAN  
CONSTRUCTION LIEN ACT. IF YOU HAVE QUESTIONS ABOUT YOUR RIGHTS  
AND DUTIES UNDER THIS ACT, YOU SHOULD CONTACT AN ATTORNEY TO  
PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE  
IMPROVEMENTS TO YOUR PROPERTY.**

\_\_\_\_\_  
(name and address of lien claimant)  
By \_\_\_\_\_  
(name and capacity of party signing for lien claimant)

\_\_\_\_\_  
(address of party signing)

Date: \_\_\_\_\_

Failure to provide the Notice of Furnishing within the time limit does not stop a general/sub contractor from being able to claim the work performed and materials supplied to projects after they have provided Notice of Furnishings.

Failure to provide the Notice of Furnishing within the time limit does not stop a general/sub contractor from being able to claim the work performed and materials supplied to projects before they have provided Notice of Furnishings, except to the extent that they have already been paid pursuant to a contractor's sworn statement or waiver of lien. This subsection does not apply to laborers.

Laborers have to provide the Notice of Furnishings within their limits in order to claim a lien.

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.



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.

A group of laborers who have claims against the same property can have one Notice of Furnishing served for all of these claims.

**Note:** The required information for each claimant must be complete.

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**570.1110**

**Sworn Statements:**

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**Key Points:**

**A contractor must provide a Sworn Statement when:**

- **when payment is due to the contractor from the owner or when the contractor requests payment**
- **when a owner demands to see it**

**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 GC and the GC did not release the funds properly.**

**Example:**

### 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

} §

County of Wayne

Albert M. Housebuilder, (dependent), 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 Owed	Balance to complete (optional)	Amount of Laborer Wages Due but Unpaid	Amount of Laborer Fringe Benefits and Withholdings Due But Unpaid
Aome 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 <sup>rd</sup> 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		\$750.00	\$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

2<sup>nd</sup> 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.

Subcontractors will provide a Sworn Statement to the contractor when payment is due to the subcontractor or when a subcontractor requests payment.

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.

Contractors or subcontractors are not required to list materials or cost of materials provided out of their inventories on the Sworn Statement.

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.

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.

If the Notice of Furnishings is required in order to claim a lien, a Sworn Statement can be prepared that represents all who were eligible to be paid.

Contractors who are required to provide a Sworn Statement to an owner may still validate the lien, but no defensible 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.

If an owner demands a Sworn Statement from a subcontractor, and the subcontractor fails to provide it, the claim is valid. However, no defensible 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 false information amounts to 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).

**B.** If the false information is between \$200 and \$1,000, OR the defendant has a prior conviction, the crime is a misdemeanor with a maximum penalty of 1 year in jail, or a \$2,000 fine, or 3 times the statement amount (whichever is greater).

**C.** If the false information is between \$1,000, and less than \$20,000, OR the defendant has one or more prior convictions under this act. The crime is then a felony, with a maximum penalty of 5 years in jail, or a \$10,000 fine, or 3 times the statement amount (whichever is greater).

**D.** If the false information is more than \$20,000, OR the defendant has 2 prior convictions under this act, the crime is a felony with a maximum penalty of 10 years in prison or a \$15,000 fine, or 3 times the statement amount (whichever is greater).

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 one year of each other.

If prior convictions are to be considered in assessing the penalty, the prosecuting attorney must include this information in the complaint listing these offenses. The evidence must be one or more of the following:

- A.** A copy of the judgment conviction
- B.** A prior trial transcript, plea-taking or sentencing
- C.** Information in a pre-sentence report
- D.** The defendant's statements

## Progress Check

- Describe the information in a Notice of Commencement.
- List the circumstances in which a contractor must provide a sworn statement?

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## CLAIM OF LIEN

***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

### **570.1111**

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

A **Claim of Lien** shall be in this form:

<b><u>CLAIM OF LIEN</u></b>	
Notice is hereby given that on the _____ day of _____, 19 _____,	
_____	
(name)	
_____	
(address)	
first provided labor or material for an improvement to	
_____	
(legal description of real property from notice of commencement)	
the (owner) (lessee) of which property is _____	
_____	
(name of owner or lessee from notice of commencement)	
The last day of providing the labor or material was the _____ day of _____, 19 _____.	
<b>TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A CONTRACTOR, SUBCONTRACTOR, OR SUPPLIER:</b>	
The lien claimant's contract amount, including extras, is \$ _____. The lien claimant has received payment thereon in the total amount of \$ _____, and therefore claims a construction lien upon the above-described real property in the amount of \$ _____.	
<b>TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A LABORER:</b>	
The lien claimant's hourly rate, including fringe benefits and withholdings, 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.	
_____	
(lien claimant)	
by _____	
(signature of lien claimant, agent, or attorney)	
_____	
(address of party signing 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, [www.statelocalgov.net/state-mi.cfm](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 filed 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.

PROOF OF SERVICE OF CLAIM OF LIEN

State of Michigan

} §

County of Bay

James D. Underwood, a person of suitable age and discretion, as the duly authorized agent for J. D. Underwood Enterprises, being first duly sworn in accordance with the law, deposes and says:

That on the 16<sup>th</sup> day of March, A.D. 2006, 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 Davus 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
-------------------	--

John D. Underwood  
(Printed name/signature of Deponent)

Subscribed and sworn to before

Linda Titus

Notary Public, Ingham

County, Michigan

My Commission Expires:

December 31, 2008

\*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. The County Clerk will 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.

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".

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 contractor did fulfill the requirement of providing the Notice of Furnishing in a timely manner.

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 filed 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>17<sup>th</sup></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>17<sup>th</sup></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>17<sup>th</sup></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.		

A person who files a lien must inform the designee by certified mail or deliver it personally at the address provided on the Notice of Commencement within 15 days of the filing.

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**

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. There is a fee for the filing just mentioned.

The recording of Notice of Commencement or claim shall provide notice to all additional purchasers on claimants.

**570.1113**

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 date, and the amount that is currently owed is not provided within 10 days of its demand, the owner or contractor shall not be required to pay until it is received.

**Key Point:**

**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:**

- **The copy of the contract between the owner and the prime contractor**
- **A written statement of the amount due and unpaid at this time**
- **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**

**570.1114**

**If a written contract does not exist between an 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.

**Key Point:**

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

**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!**

**570.1114(A)**

If a claimant who is required to be licensed, files a lien claim, the owner or any person affected by the lien can initiate the action to discharge the lien.

A claimant must state in the complaint when filing the lien, that they are licensed when required to be and they can prove it when in court.

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## **WAIVERS**

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***NOTE: The following information is an interpretation of the written law--the exact laws can be referenced at <http://www.legislature.mi.gov/>***

## 570.1115

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 accepted a promissory note, or upon the owner proving to the claimant that they have been approved for the loan, and signed the waiver under one of these conditions, the waiver would not be valid.

### **Key Points:**

**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 GC pays a claimant directly from his own account, this unconditional waiver would be used to allow him to be reimbursed.)**

**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 by check written directly to the claimant.**

### **Full Unconditional Waiver Example:**

**FULL UNCONDITIONAL WAIVER**

My/our contract with \_\_\_\_\_ to provide  
(other contracting party)  
\_\_\_\_\_ for the improvement of the property described as

\_\_\_\_\_ having been

fully paid and satisfied, by signing this waiver, all my/our construction lien rights against such 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 or 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.

\_\_\_\_\_  
(Printed Name of Lien Claimant)

\_\_\_\_\_  
(Signature of lien claimant)

Signed on: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

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

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 Example:**

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 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.	
STATEMENT OF ACCOUNT	
Contract Price	\$ <u>10,000</u>
Extras	\$ <u>0</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 + 167 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.	

Partial Conditional and Full Conditional Waivers 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 Example:

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 <u>Master Construction, Inc.</u> (other contracting party)	
to provide <u>Roofing and insulation</u>	
for the improvement to the property described as: _____	
<u>Lot 26, Green Acres Subdivision, Saginaw Heights, Bay County, Michigan Sidwell</u>	
<u>#267-43-02 Plat 27 (commonly known as 456 Stonev St, Saginaw, MI)</u>	
and by signing this waiver, waive my/our construction lien to the amount of \$ <u>1,243.90</u> for labor/materials provided through <u>October 31, 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. 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.	
<u>Price Roofing, Supplier</u> (printed name of lien claimant)	
<u>Samuel R. Price</u> (signature of lien claimant)	
Signed on: <u>November 12, 2006</u>	Address: <u>1629 Shorelake Rd.</u>
	<u>Saginaw MI 48437</u>
	Telephone: <u>(517) 321-4369</u>
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 Example:

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.

<b>FULL CONDITIONAL WAIVER</b>	
My/our contract with <u>Standard Builders, Inc.</u>	
to provide <u>cement/tiles/brick</u>	
for the improvement of the property described as: <u>Lot 94, Charlestown Manor</u>	
<u>Subdivision Northville, Oakland County, #224-82-190</u>	
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 <u>\$987.94</u>	
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.	
<u>Bob Montrose, Hill Brick Co.</u> (Printed name of lien claimant)	
<u>Bob Montrose,</u> (Signature of lien claimant)	
Signed on <u>April 12, 2006</u>	Address: <u>195 Hill Street</u>
	<u>Anytown, MI</u>
	Telephone: <u>(313) 243-8900</u>
<b>DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.</b>	

## 570.1116

A lien claim can at anytime be discharged if a bond is filed 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.

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**

Proceedings to enforce a construction lien must be held within 1 year of the date the lien was recorded.

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.)

An action of foreclosure of a lien can be maintained by an agent of laborers.

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.

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.

Contractors must have provided a Sworn Statement, when requested, in order to enforce a construction lien through foreclosure.





### **570.1118**

Action to enforce construction liens shall be brought in the county circuit court.

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.

### **570.1118a**

#### **Key Points:**

**If an owner has paid a GC, but the GC 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.**

**The home owner must provide to the court:**

- **Affidavit indicating the amount of payment**
- **Copy of the contract**
- **Change orders**
- **Evidence of payment by the owner**

**If the contractor DID NOT use a written contract as required by 570.1114, the filing of the affidavit causes the court to rule that the lien is invalid.**

## **570.1119**

All claimants entitled to a construction lien upon a property shall have equal priority.

Construction liens take priority over all garnishments for contract debt.

The first claimant in the enforcement of a construction lien takes priority over those possible claimants that follow.

Mortgage or other liens that existed before the project that caused the construction lien, take priority over all lien claimants.

Retainage is not due upon completion of a project.

## **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.

### **Key Point:**

**Example: The house is fully complete, but only 1/2 paid for because the GC has diverted funds. The homeowner does not have to provide more funds to the GC in this case even though contractually the retainage payment is supposed to be provided when the project is fully complete.**

## **570.1121**

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 satisfied from rent, profits or income from the property if it is an income property.

When a home is sold due to foreclosure, taxes and insurances due to date are paid for out of the proceeds.

In an 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.

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.

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.

### **Key Points:**

**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. Taxes and insurance due are paid out of the proceeds. 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.**

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.

### **570.1125**

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

### **570.1126**

Construction involving the owner of one condo, a lien can only be attached to that one condo.

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.

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.

To bring a construction lien against a condo, the contract must have been with a developer or owner.

### **570.1127**

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.

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 <u>Acme Lumber Co.</u> on the <u>29<sup>th</sup></u> day of <u>August</u> , 2006 in the office of Register of Deeds, County of <u>Clinton</u> , State of Michigan, said lien being recorded in Liber <u>0067</u> , Page <u>6589</u> against the following described premises: <u>(Property Description Attached)</u> is RELEASED AND DISCHARGED.	
<u>Sandra L. Shermanisku</u> Lien Claimant or Agent (name printed)	
Date: <u>October 4, 2006</u>	
State of Michigan	} §
County of <u>Ingham</u>	
On this <u>4<sup>th</sup></u> day of <u>October</u> , 2006, before me, a Notary Public, in the County personally appeared <u>Sandra L. Shermanisku</u> on behalf of <u>Acme Lumber Co.</u> know to me to be the person who executed the foregoing instrument and acknowledged the same to be his/her free act and deed.	
<u>Paula Stenney</u> (printed name/signature) Notary Public, <u>Ingham County</u> , MI My Commission expires: <u>7/31/2009</u>	
Drafted by and, when recorded, Return this document to: <u>Sandra L. Shermanisku</u> <u>45678 Johnson Rd.</u> <u>Denton, MI 49333</u>	

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.

#### Time Limits:

Document	Sub/Supplier	Laborer	Homeowner/Designee
Notice of Furnishing	20 days from first providing goods or services	within 30 days after wages are due	
Sworn Statement	upon request of payment		Must notify each subcontractor, supplier. Laborer listed on sworn statement receipt and provide a copy upon request within 10 business days
Waiver of Lien	When payment is received		If received from anyone other than the lien claimant, must verify the authenticity of the waiver of lien
Claim of Lien	within 90 days after the last day goods and services are provided	within 90 days after the last day on the job	
Proof of Service	documents must be served within 15 days of filing	documents must be served within 15 days of filing	

## Progress Check

- What is the importance of a written contract?
- Describe the difference between conditional and unconditional waivers.

# Business of Building



## Establishing a Business Entity

PROPRIETORSHIP	PARTNERSHIP	CORPORATION	S CORPORATION	LLC
P	P	N	N	C

### ***Learning Objectives***

***Describe the five basic forms of business organization.***

***Understand both the benefits and drawbacks associated with each type of business organization.***

One of the first major decisions you will have to make as you start your new business is to determine which form of legal entity to choose. Things to consider when making this decision are how you organized your operations and whether you intend to work on your own or in conjunction with others.

Which form of entity you choose can have a significant impact on the way you are protected under the law, as well as how you are affected by income tax rules and regulations. There are five basic forms of business organization: **Sole Proprietorship, General Partnership, Corporation, S Corporation and Limited Liability Company**. Each has its own benefits and drawbacks and is treated differently for legal and tax purposes.

If you are planning to have employees or if your business will be operating as a corporation or partnership, you will need to register for an **Employer Identification Number (EIN)**. You will need to file an SS-4 (Application for Federal Employer Identification Number) with the IRS. We will go into detail on obtaining an EIN in the Income Tax section of Chapter 9 of this course.

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### **Sole Proprietorship**

A sole proprietorship is typically a business owned and operated by one individual, or very often by a husband and wife. A sole proprietorship is not considered to be a legal entity under the law, but rather is an extension of the individual who owns

#### **Key Point**

- **The owner has possession of the business assets and is directly responsible for the debts and other liabilities incurred by the business.**



it. The income or loss of a sole proprietorship is combined with the other earnings of an individual for income tax purposes.

### Pros:

- **Maximum freedom from governmental regulations**
- Easiest to organize
- Least expensive to establish
- Owner makes decisions
- Owner keeps profits
- Tax advantages



### Cons:

- **Personally liable for all debts**
- **Liability extends to personal property**
- Limited to lifetime of proprietor

The sole proprietorship is the easiest form of business because it does not require any specific legal organization, except of course, the normal requirements such as licenses or permits. A sole proprietorship typically does not have any rules or operating regulations under which it must function.

If you are naming the Sole Proprietorship something other than your real name, you will need to file a **Certificate of Assumed Name** with the county clerk's office. This form will state the **DBA or "Doing Business As"** that you selected and make sure it is not already being used by another company in the county. It is a good idea to file a certificate in each county in which you will be doing business.

### Partnerships – General and Limited

In a **general partnership**, two or more individuals join together to run the business. A partnership should file a business name under which the partners can run the business. Each of the individual partners has ownership of company assets and responsibility for liabilities, as well as authority in running the business. The authority of the partners, and the way in which profits and losses are shared, can be decided and agreed upon among the partners, and documented in a partnership agreement. You must file a certificate of co-partnership with the county clerk's office in the counties in which you will be doing business.



### **Pros:**

- Combining of assets and personal credit
- Combining of tools and equipment
- Combining of individual talents
- Increased bonding capacity (result of pooling funds)
- Sharing of responsibility

### **Key Point:**

- **The responsibility for liabilities can also be included in the partnership agreement, but partnership creditors typically have recourse to the personal assets of each of the partners for settlement of partnership debts.**

### **Cons:**

- **Each partner is personally responsible for the debts of the business, and not limited to percentage of ownership**
- Less freedom to act (subject to partner's rights)
- Partnership, as a form of business, automatically terminates upon the death of a partner
- Divided authority

A **limited partnership** is comprised of both general and limited partners. There is usually one or more general partners who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in the profits or losses of the business. The limited partners do not take a part in running the business and are not liable for the debts of the partnership.

#### **Pros:**

- **Liability is limited to investment value**
- The interest of the limited partner is transferable
- Partners are not liable for associate's negligence or wrongdoing

#### **Cons:**

- Requires formal compliance with State and Federal Laws
- **Partners are personally liable for obligations and debts**

A partnership is a legal entity recognized under the law. It has rights and responsibilities in and of itself, and can sign contracts, obtain credit and borrow money. When a partnership is small, most creditors require a personal guarantee from the general partners for credit.

**Key Point:**

The rights, responsibilities and obligations of both the limited and general partners are typically documented in detail in a partnership agreement. It is a good idea to have such an agreement for any partnership, whether it is limited or general.

- **A partnership is required to file both Federal and State income tax returns. In Michigan, you must also file a Small Business Tax (SBT) return.**

A partnership typically does not pay income tax. The information from the tax return is combined with the personal income of each of the partners to determine the overall tax liability.

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## **Corporation**

A corporation is an entity which exists under the authority of State Law and is comprised of one or more individuals united into one body under a special or corporate name. The company is regarded by law as being separate and distinct from the owners, and responsible for its own debts, yet it has all the legal rights of an individual. It must file income tax returns and pay taxes on income it derives from its operations.

A corporation is the most complicated type of business and is made up of three groups of people: shareholders, directors and officers, all of which can be a single person or multiple people.

Typically, the owners or shareholders of a corporation are protected from the liabilities of the business. When a corporation is small, creditors often require personal guarantees of the principal owners before extending credit. The legal protection that the owners

receive from doing business as a corporation far outweighs the additional expense of starting and administering a corporation.

### Pros:

- Perpetual succession (not limited to life of the owner)
- Can incur debts without the owner being totally liable
- Provides the most protection against loss of personal wealth
- Easiest to raise capital
- A corporation can own property

### Cons:

- More complex than a sole proprietorship or partnership; not as easy to start up
- Loss of some freedom due to state regulations
- **More record keeping is required**
- **Double taxation**



A corporation must adopt and file Articles of Incorporation with the Bureau, along with by-laws which govern its rights and obligations to its shareholders, directors and officers. The **Articles of Incorporation** must include the following:

1. Name of the Corporation.

2. For profit corporations must include the word "Corporation", "Incorporated", "Company", "Limited" or the abbreviation "Corp.", "Ltd.", "Inc.", or "Co.".
3. Resident agent and registered office in Michigan upon whom legal service of process may be served.
4. General nature of the corporation's business. An all purpose clause is permitted for profit corporations, except for professional service corporations.
5. The term of the corporation, which may be perpetual.
6. The number and class of shares to be issued.
7. Name and business or residence address of the incorporators.
8. Any agreements between incorporators regarding terminations, distribution of assets, dissolution and any other matters that the incorporators may decide to include.

Corporations must file annual income tax returns with the IRS. The elections made in a corporation's initial tax return can have a significant impact on how the business is taxed in the future.

A corporation can also file Articles of Incorporation as a **Professional Service Corporation (PC)**. This is a corporation made up exclusively of licensed professionals, which gives them the benefits of a corporation, while keeping the laws intact involving the liability of the individual licensed person.

#### Key Points:

- **Incorporating a business allows a number of advantages, such as ease of bringing in additional capital through the sale of equity, or allowing an individual to sell or transfer their interest in the business.**
- **It also provides for business continuity when the original owners choose to retire or sell their interest.**

A **Nonprofit Corporation (NPC)** is a type of corporation that limits payment of its assets, income or profit, unless it applies directly to the purposes of the corporation. Some NPC's may be eligible for exemption from federal income tax or Michigan Single Business Tax or Sales Tax, however, sales tax exemption applies only to purchases made by the business for their own use.

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### **Sub-Chapter "S" Corporation**

If a corporation meets the eligibility requirements, it has the option of being taxed as a partnership or sole proprietorship, rather than a corporation. If it elects to take this option, it is referred to as an "S Corporation". The shareholder(s) can choose to have their profits taxed at either corporate or individual tax rates. The company still enjoys the benefits of a corporation. Eligibility requirements are:

- No more than 75 stockholders
- Stockholders must be U.S. citizens
- There can only be one class of stock outstanding

An S-Corporation must still file Articles of Incorporation with the Department of Licensing and Regulatory Affairs, Bureau of Commercial Services, Corporation Division.

#### **Pros:**

- **Avoid double taxation**
- **Owners can offset company losses against their income**

#### **Cons:**

- Some restrictions
- Company must operate on a calendar year

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## **Limited Liability Company (LLC)**

An LLC is a form of business entity that offers legal, tax and economic advantages over the traditional forms of business ownership. It combines the liability protection of a corporation with the favorable tax treatment of a partnership or sole proprietorship.



One of the greatest advantages of an LLC is its tax structure. They have the benefit of one-level taxation. In other words, any income generated by the company is passed through to the tax return of the owner. Owners do not avoid personal taxes, but they are able to avoid corporate taxes.

Another advantage that an LLC has over a partnership is limited liability of its owners. It is an incorporated business that generally protects all owners against individual liability for the organization's liability and obligations, and against liability for the negligence or wrongdoing of other people involved in the business. Also, members are not personally liable for the debts and obligations of the LLC. The only individual liabilities the members have are:

1. The amounts the members have agreed to contribute to the LLC
2. Under some statutes, amounts distributed to the members
3. Any negligence or wrongdoing the member individually commits or that the member supervises



This generally means that members are not liable for the contracts and general liabilities of the LLC or for any mistakes or improper actions of others in the name of the LLC.

## Progress Check

- What else, besides Federal and State income taxes, must be filed by a partnership?
- Which business entity allows owners to offset company losses against their personal income?
- What are the cons against forming a limited partnership?

# Business of Building



1

## **Business Finance**

<b>FINANCIAL NEEDS</b>	<b>CASH COLLECTION</b>	<b>DEBT CONTROL</b>	<b>LOANS</b>
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### ***Learning Objectives***

*Describe several forms of financing you may need in order to secure your project.*

One nice aspect of the building industry when you are first starting out is that you can obtain at least a portion of the funds from the customer before each project begins. You may also be able to receive more funds in the form of draws as the projects progress. Very often the customer will be the one that will need to secure the financing for the project, which alleviates you from that risk.

However, you will need to obtain capital for the initial expenses prior to opening such as the cost of licensing requirements and basic tools of the trade. As your building business continues to grow, you will probably need to invest in more tools, equipment and even a storage building or workshop that will require financing.

Business financing can take two forms: debt or equity. Debt financing is when you borrow money. Whether the loan comes from family, friends, a bank or investors, it is still debt that will have to be repaid. Equity relates to selling an ownership interest in your business. This type of sale can take many forms such as admitting a partner into the business or forming a corporation and issuing stock. It would be a good idea to consult an attorney before engaging in equity financing because there are significant legal ramifications involved.



### **Projecting Financial Needs**

The first step in obtaining financing is to describe what you want to accomplish in your construction business and how much it will cost. You may even want to break your description down into segments and assign a cost to each. You need to determine if you are going to need financing to begin with or if you can build the funds over time, investing back into your company.

Goal setting is very useful in financial planning. For example, determine at what financial stage you will be able to purchase

equipment or replace old equipment, or at what financial point will you be able to hire a craftsman. All of this information should be included in your detailed Business Plan, which you will need if you plan to secure a loan through a bank or credit union. All financial institutions require a business plan when applying for a business loan.



List your options for obtaining financing. Obtain a copy of your current credit report and clean up anything that might be objectionable to a financial institution. Put together a monthly cash flow plan, balance sheets, income statements and a break-even analysis. You may as well get these items together now so you will have them for whatever type of financing you may want to secure. You will need to include cost and income projections for three years.

There may also be grants and low interest loans available, especially if you are a woman or minority. Other sources of finance may be available such as bringing in a partner or other investors. With each option, list the time frames in which the money can be received.

Be sure to include all options that are available to you, even if you don't plan to use them initially. You may at a later time.

Prepare a personal finance statement as well. This is a statement that determines your net worth. List all of your assets, what you

owe on them and what they are worth. The equity is the difference between what your assets are worth and what you owe on them. Also list accounts where you have money stored, such as savings, IRA, money markets. Can you comfortably pull money from any of these accounts?

### **Starting an Analysis**

A very important aspect of finance and debt control is the ability to forecast cash resources and uses. You can rack your brain coming up with the dollars expected to come into and go out of your business, but at best it is a good guess. We do not always know when



customers will pay and when we will have enough money to pay all of our obligations. Even hiring outside consultants may be nothing more than an educated guess.

One of the most significant factors to be considered in your cash flow forecast is the volume of revenue that will be generated in the next several months and for the rest of the period for which you intend to forecast. Your revenue forecast must be as fine tuned as possible. It is a bit unrealistic to think that your market will always remain at a peak. A revenue forecast needs to be based on facts. You need to include sales history or the history of similar businesses you have owned or operated or even the competition.

Some of the questions which should be addressed are what other factors can be controlled such as adding new products or services,

deleting unprofitable operations, adding a new employee, or terminating one that is not producing up to par. In preparing a forecast, you must also take into consideration things such as seasonality of the business, the state of the economy, and the period over which you forecast.

Your ability to forecast revenue for the next month is much better than it is to forecast three to five years out. When preparing long-term forecasts, the more detail the better. Following is a worksheet to help you create a cash flow analysis. This is a generic worksheet, so you may need to add items that pertain to your business. There are several blank spaces for this additional information. You may want to make a copy of this form for year two and three, or for future use as your business grows and you require financing.

PROJECTED CASH FLOW STATEMENT (one year)				
	First Qtr.	Second Qtr.	Third Qtr.	Fourth Qtr.
Net Income	_____	_____	_____	_____
Add/deduct items not requiring cash	_____	_____	_____	_____
Depreciation	_____	_____	_____	_____
Net Cash Provided	_____	_____	_____	_____
Increase/Decrease in cash	_____	_____	_____	_____
Accounts Receivable	_____	_____	_____	_____
Inventory	_____	_____	_____	_____
Property/Buildings	_____	_____	_____	_____
Equipment	_____	_____	_____	_____
Accounts Payable	_____	_____	_____	_____
Accrued Income Taxes	_____	_____	_____	_____
Preferred Stock	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Increase/Decrease in Cash	_____	_____	_____	_____
Net Change in Cash	_____	_____	_____	_____
Cash at Beginning of Quarter	_____	_____	_____	_____
Cash at End of Quarter	_____	_____	_____	_____

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## **Cash Collections**

Once you are comfortable with your forecast and have determined a reasonable level of revenue, you need to ask yourself the following questions:

- What percentage of revenue will be received in cash?
- What portion will be credit that goes into accounts receivable?
- For the credit sales, how soon will the cash be collected?

- If paid by credit card, what percentage goes to credit card fees?
- How much of accounts receivables will be collected in 30 days, 60 days, 90 days or longer?
- How much may never be collected?

To assume that 100% of your sales will be collected is probably unrealistic, especially in today's economic environment. As painful as it sounds, you will be much better prepared if you determine what percentage of your collections you can afford to never receive.

***Key Point:***

***A good rule of thumb is to assume that you are going to have to pay your expenses sooner than you think and that you will collect your cash more slowly than you anticipate. If you work with this attitude, any surprises should be favorable ones.***

### **Internal Control**

Internal Control is a system of checks and balances within a business that helps ensure that the company's assets are properly safeguarded and that the financial information produced by the company is accurate and reliable. When you are the sole employee of your company, or at least handling all of the financial transactions yourself, good internal accounting control is fairly straight forward.





At some point, your company may grow to the size where you need to delegate some of the financial functions. It is important that you still maintain control and that all financial transactions are accounted for properly. Two rules of thumb should take place no matter who is handling the finances:

- When goods and services are provided to customers, make sure that the sale is recorded and the revenue is recorded in accounts receivable. Always make sure the cash is collected?
- When cash is expended by your company, always make sure you receive the goods or services.

The methods used to ensure that the above two rules are always followed may vary widely. It may be as simple as numbering the sales tickets and making sure all tickets are accounted for, or you may want to review all invoices and timecards before signing any checks. This is easy to do when your company is small, but as the company grows, it can get very time consuming and often business owners will "let things slide". Sometimes they slide until there is an avalanche and things get out of hand. This may be the point that you want to start delegating.

**Key Point:**

You may even need to consider things like segregating authority, employee fidelity bonds or controlled access storerooms.

***No matter what the size of your business, controlling and safeguarding you hard earned assets should be a priority from the beginning***

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## **Debt Control**

Staying in control of your debt, or even becoming "debt free" can be difficult, especially in these times of economic downturn. That is why it is best to start building a savings cushion for your business right from the start. The financial health of your business may depend on it, especially if your business is seasonal like so many building companies are. Most financial experts recommend having a minimum of three month's worth of expenses set aside in case of emergency. This is a good rule of thumb for your personal living expenses as well as your business.



When obtaining financing, or purchasing new equipment such as a new vehicle, get the real cost of the debt. Don't accept financing based on "low monthly payments" or "easy monthly payments". Before signing a credit agreement, read the fine print to find the annual interest rate (APR). If you have a good credit rating (700 or above) you should be eligible for more favorable terms. Be sure to research what **good terms** are at the time. If your credit history is

poor, you will pay more interest. Also, look to see if there are annual fees for participating or any other aspect of the loan that surprises you. All of these fees add up and will be added to your total debt.

## **Business Credit Cards**

When you start a new company, many credit card offers will come in. If you decide that you would like a business credit card, select the one that best fits your needs. Be very cautious when using any debt that has a 15% to 35% interest rate, it is very hard to earn your way out of that debt.



**If a credit card is obtained using your social security number and it has your company name on it, then BOTH you and your business are responsible for the debt.** The credit card company has a hand in both your pockets. As long as payments are made in a timely manner, it will not matter, but should you miss a payment, or be late, both your personal credit report and your business credit will suffer.

Business cards should be obtained with your federal Tax ID number and **only that number**. If a card you already have has your social security number, do not add your business name. When a card is personal, you have options and federal protections against debt collectors, but business cards have no options or federal protections.

## **Using Debt Professionals**

Large corporations in distress typically have access to debt control professionals or specialists who can restructure debt loads and help work out the financial mess, sometimes by selling off land or properties. Small businesses, on the other hand, often don't have valuable assets to reorganize, making them less-than-attractive clients. It may not be as easy to find a professional that can help you, but they are out there. Keep looking.

When seeking professional help, look for those specialists that are non-profit organizations. And don't be afraid to seek help if you feel like your debt is getting out of control. It's not a sign of defeat, but rather a sign that you are ready to take back control of your business. When you take your car to a mechanic, you are not admitting that your car has defeated you. You are just going to an expert in the field who knows how to solve the car's problem. The same goes for debt control.

The method of operation is fairly standard: The debt professional first takes on the disgruntled creditors so you can focus on keeping your business afloat, and then the specialist uses negotiation skills to get creditors to accept either reduced payments or an extended payment schedule. The fee that the specialist charges is usually worked into the payment plan.

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## **Consolidation Loans**

***Key Point:***

If you're already debt ridden you may be tempted to apply for a consolidation loan. Here a lender loans you money to pay off many, or even all of your bills. You pay off all your credit

cards and other debt by putting several smaller payments into one larger monthly payment to the that lender. Most people think consolidation loan means they'll pay less, but that may not be the case. A consolidation loan should only be considered if the interest rate is less than all the credit you owe. Carefully check the APR and fees before signing anything, to make sure you won't end up paying more than you're currently indebted for! Then close out all of the accounts you paid off! If you continue to charge on them, you are simply accumulating more debt, not eliminating it.

***Beware!! Consolidation loans are not for everyone and can be dangerous if you aren't careful.***

### **Consolidation Plans**

Companies that provide consolidation plans simply restructure your debt instead of adding to it with a consolidation loan. The distinction is subtle, but consolidation plans are not loans. They do not lend you any money and you are not taking on any new debt; you just send the monthly payment to them and they pay all your creditors. With a

consolidation plan, the company works as a liaison between you and your creditors, and negotiates with them to reduce or eliminate your



interest and late fees. Very often they are successful at getting the credit cards to drop the interest to 0. This allows the debt to be paid off much sooner, since you are only paying off principal and no interest. Once you enroll in the program, your creditors are forbidden to contact you. They can only contact your debt manager. You send the bill paying company one monthly payment, and they in turn pay off all your creditors a little bit at a time. Usually when the smallest debt is paid off, more cash is available to be applied to the remaining debts, paying off those balances even more rapidly.

Some companies are non-profit and others make a profit by investing your monthly payments for themselves. Both types are legitimate, however we recommend considering the non-profit first.

## Progress Check

- What are some of the questions you should ask yourself in terms of collecting cash/payment?
- What should be included in your personal finance statement?
  - Describe "internal control".

# Business of Building



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## **Accounting and Bookkeeping**

**BASIC TERMS**

**JOURNALS**

**EARNINGS**

### ***Learning Objective***

***Understand and describe the basic principles of financial management.***

As a business owner, you are responsible for the financial health of your business. Frequently, when a contractor's business fails, the cause is related to financial management problems rather than construction problems. Many contractors fail to realize that they must understand basic principles of financial management.

Organization is crucial in maintaining a successful business. Staying organized helps save time and money. Here are a few important points that will help you stay organized:

- A.** Always keep all records up to date, recording transactions as they occur.
- B.** Keep business and personal finances separate (separate bank accounts).
- C.** Make all payments by check so you have a record of the payment.
- D.** Never write checks to "cash". Always make the check out to your own name, document its purpose and deposit in a personal account.
- E.** Save all receipts and keep them organized and recorded. If a receipt is not available, write a statement explaining the transaction.
- F.** Record all deposits and expenses at the time they occur.
- G.** Balance bank statements monthly.
- H.** Keep all bank statements and canceled checks at least four years.
- I.** Keep copies of all tax returns.
- J.** Understand payment terms and progress payments.

## **BASIC ACCOUNTING TERMS**





Become familiar with the following basic accounting terms. It is important that you understand the financial record-keeping system being used in your business and are able to identify essential reports and what they tell about the business. A clear understanding is crucial in staying organized and managing costs.

**Accelerated Depreciation:** A depreciation method which allows faster write-offs than the straight line method. These methods provide a greater tax shield effect than straight line depreciation, and so companies with large tax burdens might like to use accelerated depreciation methods. Accelerated depreciation methods are popular for writing off equipment that might be replaced before the end of its useful life since the equipment might be obsolete (e.g. computers).

**Accrued wages:** The wages that a company owes to its employees and hasn't paid yet. They are listed on a company's balance sheet.

**Accumulated Depreciation:** The total amount of depreciation that has accumulated over a number of years that has been charged against the appropriate fixed assets.

**Asset:** Anything of value owned by the business: cash, accounts receivable, money loaned by the business, land, prepaid insurance,

equipment, building(s), and furniture and fixtures. Or, items possessing service potential or a future benefit to the owner. Assets are divided into two kinds: current assets and fixed assets.

**Budgeting:** A process of developing periodic forecasts of future income and expenses for a fixed period of time. Actual income is periodically compared to the budget so management is given adequate feedback on the budget's effectiveness.

**Cash Budget:** An organized method of comparing expected receipts against planned expenses to ensure that there are sufficient funds to meet payroll, accounts payable, and other short-term obligations.

**Cash Discount:** A cash discount is a reduction in the selling price of merchandise or a percentage off the invoice price in exchange for payment under agreed upon terms.

**Current Asset:** An asset which can be converted into cash within one year or one operating cycle: cash, accounts receivable, inventory, loans owed to the business, notes receivable, and prepaid expenses are examples.

**Current Liability:** Must be paid within one year in the normal course of business. Examples are notes payable, accounts payable, unpaid wages and taxes due.

**Depreciation:** The process of allocating the cost of a tangible fixed asset over the asset's useful life. For instance, if a \$10,000 piece of equipment has a useful life of ten years, its value on the books can be reduced by \$1,000 each year. The \$1,000 is entered in the accounts as an expense for each of the ten years. Land may not be depreciated.

**Fixed Asset:** Tangible property is used in the operation of a business and does not fall into the category of current assets. It

often includes land, equipment, buildings, and furniture and fixtures.

**Liability:** A creditor's claims on a company's assets. Liabilities are divided into two kinds: current and long-term.

**Long-Term Liability:** Any obligations or debts which are due and payable over a comparatively long period, normally more than one year, and which do not fall into the category of current liabilities.

**Net Working Capital:** The amount that Current Assets exceed Current Liabilities. For example, if a business has Current Assets of \$100,000 and Total Liabilities \$50,000, then its Net Working Capital is \$50,000. Net Working Capital is also called Owner's Equity, Stockholders' Equity, or Partners' Equity.

**Operating Cycle:** The time required to purchase or manufacture a company's inventory, sell the product (goods or services), and collect the revenue from the sale of the product.

**Points on Loans:** A one-time charge made as a percentage of the loan, deducted up front from the amount of the loan. If the points are three percent, then \$3 is deducted from every \$100 of the loan and the contractor is given \$97. Interest is paid on the full loan amount. Points are usually negotiable and must be considered with the interest rate in determining the true cost of the loan.

**Source Document:** The foundation of accounting work. This is the document, which proves the transaction occurred. These include check stubs, invoices received, invoices sent, cash receipt records, time cards, or other documents which are the basis for accounting journals or entries.

**Straight-Line Depreciation:** The simplest depreciation procedure. It writes off the depreciable value of an asset at a uniform rate throughout its usable life. It assumes that the amount of value that is lost is constant year after year. It is widely used by

contractors for estimating equipment costs for a certain job and equipment cost control on ongoing projects.

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## JOURNALS

### Journals and the General Ledger

Entering transactions in the appropriate journals on a daily basis is important when beginning bookkeeping. At the end of the month, the journal entries are added up and posted to the General Ledger. When the accounts in the General Ledger are summarized, the information needed to prepare company financial statements and annual tax returns is available.



**Payroll Journal** - This journal contains information needed for state and federal reports, in addition to employee wage information. This journal also contains labor costs data broken down by specific types of jobs for use in future contract estimates.

**Disbursements Journal** - this journal shows the amounts paid out and tells what the payments cover. It shows where the money went and what it was spent on. A contractor will know if the funds are available to cover accounts payable on time and how much is still owed.

**Cash Receipts Journal** - Records all income received. Information from this journal can be used for job costing and preparing sales tax forms.

**General Journal** - This journal is used to record all non-cash expenses. Some examples include equipment depreciation and bad debts.

## **General Ledger**

At the end of the month, entries made in the journals are summarized and posted to the General Ledger. At the end of the month, after all income and expenses are posted to the General Ledger, financial statements can be prepared.

## **Methods of Accounting**

**Cash Method** - Records income when cash is received. Records expenses when cash is paid.

**Accrual Method** - Records income at the time income is earned. Records expenses at the time they are incurred.

**Balance Sheet** - A financial statement consisting of a one or two-page summary of company assets, liabilities and net worth for that Accounting Period. This summary shows the financial status of a company at a specific date.

**Income Statement**- Also called profit and loss statement (P&L), is a company's financial statement that indicates how the revenue is transformed into net income (profit). An income statement shows whether the company made or lost money during the period being reported. The income statement represents the entire accounting period.

## **Assets**

Assets are items of value held by the owner of a company that can be used to pay back debt.

**Current Assets** - These are assets that can be converted into cash within one year:

- A. Cash
- B. Accounts Receivable
- C. Inventory
- D. Loans and Notes Receivable
- E. Pre-paid expenses



**Fixed Assets** - Assets that cannot be converted to cash within one year:

- A. Real estate
- B. Machinery
- C. Equipment

**Liabilities** - Liabilities are all debts presently outstanding.

**Current Liabilities** - These are debts that must be paid within one year.

**Fixed Liabilities** - These are long-term debts.

### **Formula for Net Worth:**

Net Worth = Assets - Liabilities

### **Formula for Net Working Capital:**

Net Working Capital = Current Assets - Current Liabilities

### **Cash Flow Statement**

This is the difference between receipt money coming in and disbursement money going out.

### **Positive Cash Flow**

This is income left over after cash disbursements have been distributed.

### **Negative Cash Flow**

This is when the income coming in is less than disbursements.

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## **EARNINGS RECOGNITION**

The two most important aspects of revenue recognition are matching and consistency. **Example:** If half of a contract price of a job is included in income during a certain month, then half of the contract cost should be included as expenses in that same month.



If contracts cannot be completed in a taxable year, the Tax Reform Act of 1986 allows for the use of one of three accounting methods for this type of long-term project.

1. **Completed Contract Method** - Instead of estimating income according to partial project cost, the completed project method recognizes profits only when the project is completed.
2. **Percentage of Completion Method** - Assigns cost and profits according to degree of actual project completion.
3. **Completion Capitalized Cost Method** - Recognizes 90% of the estimated expenses and income calculated by the percentage of completion method to current fiscal year. The remaining 10% of the project expenses and income are deferred to the year the project is completed.

## **Financial Ratios**

**Liquidity Ratios** - measures a company's short run ability to meet financial obligations.

**Asset Management Ratios** - Measures how effectively a company is managing its assets.



**Debt Management Ratios** - Measures the extent to which a company utilizes debt to magnify earnings and minimize losses, therefore, minimizing risk.

**Profitability Ratios** - Measures the return on revenues and investments on assets in particular projects.

**Margin of Profit** - Used to compare the profitability of various types of jobs, suggesting areas of concentration for the contractor.

## Progress Check

- What is the importance of journals and ledgers?
- Describe the difference between current and fixed assets.

# Business of Building



## **Employees, Payroll and Taxes**

**PAYROLL TAXES**

**FICA TAXES**

**INCOME TAXES**

**EINs**

### ***Learning Objective***

***Understand and describe the basic payroll and tax responsibilities of an employer.***

### **"INDEPENDENT CONTRACTOR" OR EMPLOYEE?**

Independent contractors increase staffing flexibility, reduce employee benefit costs and eliminate the employer's responsibility for paying withholding, social security and unemployment taxes. It's no wonder so many companies turn to independent contractors.

What at first may seem like an easy solution, can turn into a battle with the Internal Revenue Service for companies who misclassify employees as independent contractors.

Faced with income underreporting and the subsequent loss of tax revenues, the IRS is turning up the heat on companies that misclassify employees as independent contractors. Companies that get caught are held liable for the income and social security taxes that should have been withheld and paid, and are also assessed interest and penalty charges.

In determining whether a worker is an employee or an independent contractor, the IRS's key determinant is the degree to which the employer controls and directs the workers methods and specific work hours used to complete a job.

To classify a worker, the IRS considers a 20-factor list that measures the degree of control the employer has over him or her. Answers to the following questions can help you determine if the individual is an independent contractor.

Does the person work solely for your organization? A worker who is free to perform work for other customers and regularly provides services to other companies is more likely to qualify as an independent contractor than one who works exclusively for your company.

**Key Point:**

**The general rule is that an individual is an independent contractor if the employer has the right to control or direct only the result of the work, and not the means and methods of accomplishing that result. Generally speaking, the more control the employer exerts over a subcontractor, the more likely it is that the IRS will consider the person to be an employee.**

Can the worker set his or her own hours and leave when the job is complete? Allowing maximum flexibility in setting work hours helps to protect independent contractor status. The same holds true for the place of work. While it is generally safe to allow an independent contractor to work on your premises, it's best that you don't require it.

Does the person provide his own tools, equipment, and supplies? To avoid employee classification, you should require independent contractors to furnish and pay for their own work materials whenever and wherever feasible.

Can the worker demonstrate that he or she is in his or her own business? Business cards, stationary, and advertisements provide evidence that the individual runs his or her own separately established business or trade. Obtain copies of these materials and keep them on file. Also, most individuals in business have a federal employer tax ID number (FIN). Ask for this number as well as the workers Social Security number.

Does the person invoice the company for payment? Be sure an independent contractor submits invoices to the company for payment and then keep copies of these invoices on file. To protect a person's status as an independent contractor, it is important that you do not pay his or her business or travel expenses, or provide liability or health insurance of any kind.



Can the person bring in additional help if necessary? If the worker determines that additional resources are needed, he or she should be the one to hire, supervise, and pay any necessary assistants. Another important point: to avoid jeopardizing a worker's status as an independent contractor, you should not require that he or she provide the services personally. He or she should be free to assign someone else to the job.

Does the person receive training from the employer? Providing the worker with training or assigning an experienced employee to work with the worker points to an employer/employee relationship.

It's often difficult to assess with any certainty that the worker will be deemed an independent contractor in the IRS's eyes. Contact your CPA for some assistance or ask the IRS for a determination by filing Form SS-8.

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## **Payroll Taxes**

If you have employees, you will need to report payroll by calculating gross pay and various payroll deductions to arrive at their net pay. This requires that you be detail oriented and work with extreme accuracy. If you do not hire a payroll company to handle this aspect of your business, you will certainly need a computer program that has payroll features. Quickbooks is a good example of such a program.

## **Payroll Deductions**

Payroll deductions must be withheld from an employee's paycheck. This is required by law. Employers must hand these withholdings over to various tax agencies. Following is a list of the various deductions:

- Federal income tax withholding

- Social Security tax withholding (6.2% up to the annual maximum)
- Medicare tax withholding
- Federal unemployment insurance
- State income tax withholding
- Various local tax withholdings such as city, county or school district taxes, state disability or unemployment insurance.

## W4 Form - Employee Withholding Allowance Certificate

When you hire employees to work for you, they will need to fill out a W-4 Form to let you, as the employer, know how much to withhold from their paychecks. It is also a good idea to review the withholding amount with your employees on a regular basis to ensure that the appropriate amount of tax is withheld.

Form <b>W-4</b> Department of the Treasury Internal Revenue Service		<b>Employee's Withholding Allowance Certificate</b> ▶ Whether you are entitled to claim a certain number of allowances or exemption from withholding is subject to review by the IRS. Your employer may be required to send a copy of this form to the IRS.		OMB No. 1545-0074 <b>2008</b>
1 Type or print your first name and middle initial.		Last name		2 Your social security number
Home address (number and street or rural route)		3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note. If married, but legally separated, or spouse is a nonresident alien, check the "Single" box.		
City or town, state, and ZIP code		4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a replacement card. ▶ <input type="checkbox"/>		
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)		5		
6 Additional amount, if any, you want withheld from each paycheck . . . . .		6 \$		
7 I claim exemption from withholding for 2008, and I certify that I meet <b>both</b> of the following conditions for exemption. • Last year I had a right to a refund of <b>all</b> federal income tax withheld because I had <b>no</b> tax liability <b>and</b> • This year I expect a refund of <b>all</b> federal income tax withheld because I expect to have <b>no</b> tax liability. If you meet both conditions, write "Exempt" here . . . . . ▶		7		
Under penalties of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief, it is true, correct, and complete.				
Employee's signature (Form is not valid unless you sign it.) ▶		Date ▶		
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)		9 Office code (optional)	10 Employer identification number (EIN)	

For Privacy Act and Paperwork Reduction Act Notice, see page 2. Cat. No. 10220Q Form **W-4** (2008)

## Voluntary Payroll Deductions

Voluntary payroll deductions are withheld from an employee's paycheck only if the employee has agreed to the deductions. These deductions pay for various benefits which the employee has chosen to participate in. Here are some examples:

- Health insurance plans such as medical, dental or eye care
- Life insurance premiums
- Retirement plans such as a 401k
- Employee stock purchase plans
- Meals, uniforms, union dues or other job-related expenses

These deductions can be paid with pre-tax dollars or after-tax dollars, depending on the type of benefit being deducted.

## **Employer Payroll Taxes**

Your company is responsible for paying a portion of payroll taxes. These payroll taxes are an added expense over and above the expense of an employee's gross pay. The employer-portion of payroll taxes include the following:

- Social Security taxes (6.2% up to the annual maximum)
- Medicare taxes (1.45% of wages)
- Federal unemployment taxes (FUTA)
- State unemployment taxes (SUTA)

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## **FICA Taxes**

FICA stands for the **Federal Insurance Contributions Act**. The FICA tax consists of both Social Security and Medicare taxes. Social Security and Medicare taxes are paid both by the employees and the employer. Each party pays half of these taxes: employees pay half, and employers pay the other half. Together both halves of the FICA taxes add up to 15.3%. The 15.3% FICA tax is broken down as follows:



- Social Security  
(Employee pays 6.2%)
- Social Security  
(Employer pays 6.2%)
- Medicare  
(Employee pays 1.45%)
- Medicare  
(Employer pays 1.45%)



## Reporting Payroll Taxes

Employers are required to report their payroll tax obligations and to deposit payroll taxes in a timely manner. Reporting requirements include:

- Making federal tax deposits
- Annual federal unemployment tax return (Form 940 or 940EZ)
- Employer's quarterly payroll tax return (Form 941)
- Annual Return of Withheld Federal Income Tax (Form 945)
- Wage and Tax Statements (Form W-2)

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## Income Taxes

Eventually you will have to deal with income taxes. The income tax laws are extensive and can be confusing for a builder just starting business. Income taxes have a direct result and a potentially significant impact on the cash flow of your business. If you find that the various deadlines and liabilities involved with taxes become a burden, you may want to consult a qualified CPA or tax attorney.

## Income Tax Forms



Each type of legal entity is required to file a different type of income tax form.

**Sole Proprietorship.** A sole proprietorship is considered to be a component of the individual's personal tax situation. The tax form required is the Schedule-C which is included with the owner's Form 1040. In addition, if the business has net taxable income, then a Schedule SE must be prepared to determine the amount of self-employment tax that is due.

**Partnership.** A partnership is not a taxable entity. It is treated as a conduit through which taxable income is passed to the individual partners for inclusion in their respective tax returns. The partnership is required to file Federal Form 1065 and Michigan SBT. No tax is due with these forms. However, included with the forms is a schedule K-1 which lists the various items of income and credits to be included on the individual partner's return. Draft Forms 1120 and 1065, and new Schedule B (for the 1120) and Schedule C (for the 1065) have been released for tax years ending on or after 12-31-2008. The changes are designed to increase the transparency of the relationships between entities that make up complex business enterprises. Also, minor revisions have been made to Schedule K-1. Schedule M-3, "Net Income (Loss) Reconciliation for Certain Partnerships", will be filed starting with tax years ending on or after December 31, 2006.

**Corporation.** A corporation is considered a taxable entity and is required to file a Federal Form 1120.

**S-Corporation.** An S-Corporation is a type of corporation that is specially treated under the tax laws. The government taxes this type of entity in the same manner as a partnership, with certain exceptions. The tax forms required are Federal Form 1120S.

**Limited Liability Company (LLC).** This is a new form of business organization and if properly structured, is treated as a partnership

for Federal income tax purposes. For state income tax purposes, the state determines the income tax.

### **Michigan Business Tax (MBT):**

- This business tax was instituted as of 01/01/2008.
- Only companies with \$350,000.00 or more of apportioned gross receipts must pay this tax.
- Business income taxed at a rate of 4.95%.
- Modified gross receipts tax (sales minus purchases from other firms) at a rate of 0.8%

Click the presentation tab and look for:

"MBT Detailed Overview Webinar- October 11, 2007"

### **Tax Estimates:**

The law requires that if an estimate of the tax is not properly prepaid on a quarterly basis, a non-deductible underpayment will be levied.

You must make estimated tax payments for the current tax year if both of the following apply:

- 1.** You expect to owe at least \$1,000 in tax for the current tax year.
- 2.** You expect your withholding and credits to be less than the smaller of:
  - a.** 90% of the tax to be shown on your current years' tax return.
  - b.** 100% of the tax shown on your prior years' tax return.

### **Due Dates:**

### **Sole Proprietorships** ♦

Federal Form 1040 and Michigan Form SBT are due April 15<sup>th</sup>. Estimated tax payment Forms (Federal Form 1040-ES and Michigan Form SBT-ES) are due quarterly on April 15<sup>th</sup>, June 15<sup>th</sup>, September 15<sup>th</sup> and January 15<sup>th</sup>.



**Partnerships** ♦ Federal Form 1065 and Michigan SBT are due April 15<sup>th</sup> after the end of the tax year for most partnerships.

**Corporations** ♦ Federal Form 1120 and Michigan SBT are due March 15<sup>th</sup> after the end of the tax year. The Federal tax deposit Form 8109 and Michigan SBT-ES are due the 15<sup>th</sup> day of 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> months of the tax year.

**S-Corporations** ♦ Federal Form 1120S and Michigan SBTs are due March 15<sup>th</sup> after the end of the tax year. Federal tax deposit Form 8109 and Michigan SBT-ES are due the 15<sup>th</sup> day of the 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> months of the tax year.

**LLC** ♦ May be classified as a partnership, sole proprietorship or corporation for Federal income tax purposes and the Michigan SBT.

### **Extensions**

You may request an extension of time to file the tax returns, however, these extensions of time do not extend the time for paying the tax.

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## Employee ID Numbers (EIN)

An Employer Identification Number (EIN) is also known as a Federal Tax Identification Number and is used to identify a business entity. Most businesses need an EIN. You can apply for your number online by going to the Internal Revenue Service web site (IRS.gov). Go to:

[www.irs.gov](http://www.irs.gov)

Click the Business tab at the top

Click the Employer ID Number link in the left column

Follow the instructions for Apply for an EIN Online

There is no cost to obtaining an EIN number. This is a free service offered by the Internal Revenue Service.

Generally, when the ownership or structure of your business has changed, you will need to get a new EIN number. Changing the name of your business does not require a new EIN number. Below is a list of circumstances that will and will not require new EIN numbers.

### Sole Proprietors

You **will be** required to obtain a new EIN if any of the following statements are true.

- You are subject to a bankruptcy proceeding.
- You incorporate.
- You take in partners and operate as a partnership.
- You purchase or inherit an existing business that you operate as a sole proprietorship.

You **will not** be required to obtain a new EIN if any of the following statements are true.

- You change the name of your business.
- You change your location and/or add other locations.
- You operate multiple businesses.

## Partnerships

You **will be** required to obtain a new EIN if any of the following statements are true.

- You incorporate.
- Your partnership is taken over by one of the partners and is operated as a sole proprietorship.
- You end an old partnership and begin a new one.

You **will not** be required to obtain a new EIN if any of the following statements are true.

- The partnership declares bankruptcy.
- The partnership name changes.
- You change the location of the partnership or add other locations.
- A new partnership is formed as a result of the termination of a partnership under IRC section 708(b)(1)(B).
- 50 percent or more of the ownership of the partnership (measured by interests in capital and profits) changes hands within a twelve-month period (terminated partnerships under Reg. 301.6109-1).

## Corporations

You **will be** required to obtain a new EIN if any of the following statements are true.

- A corporation receives a new charter from the Secretary of State.
- You are a subsidiary of a corporation using the parent's EIN or you become a subsidiary of a corporation.

- You change to a partnership or a sole proprietorship.
- A new corporation is created after a statutory merger.

You **will not** be required to obtain a new EIN if any of the following statements are true.

- You are a division of a corporation.
- The surviving corporation uses the existing EIN after a corporate merger.
- A corporation declares bankruptcy.
- The corporate name or location changes.
- A corporation chooses to be taxed as an S corporation.
- Reorganization of a corporation changes only the identity or place.

**Limited Liability Company (LLC)** An LLC is a new entity created by state statute. The IRS did not create a new tax classification for the LLC when it was created by the states; instead IRS uses the tax entity classifications it has always had for business taxpayers: corporation, partnership, or sole proprietor. An LLC is always classified by the IRS as one of these types of taxable entities.

## Progress Check

- What factors determine whether a worker is an independent contractor or an employee?
  - List 5 different payroll deductions.

are restricted to a certain age, or prohibited under age 18. Employers subject to coverage by both state and federal laws must comply with the more stringent provisions of the two laws. **Minors under the age of 18 years are prohibited from working in the following hazardous types of work:**

- **Motor Vehicle Driving (on public roads and water ways)**
- **Power-Driven Woodworking Machines**
- **Exposure to Radioactive Substance**
- **Power-Driven Hoisting Apparatus, including lift truck, forklift, bobcat, etc.**
- **Power-Driven Metal-Forming, Punching, and Shearing Machines**
- **Power-Driven Bakery Machines**
- **Power-Driven Paper-Products Machines**
- **Power-Drive Meat Processing Machines, including meat slicers**
- **Power-Driven Circular Saws, Band Saws, and Guillotine Shears**
- **Roofing Operations**
- **Excavation Operations**
- **Construction Work**

Deviations from hazardous occupations for age 16 and 17-year-old minors are permitted under Michigan's child labor laws. Exemptions from hazardous orders are also allowed under federal child labor laws for students enrolled in related **state approved career and technical education training or apprenticeship** programs. Contact each agency directly for more information.

### **Adult Supervision**

A minor shall not be employed unless the employer or an employee who is 18 years of age or older provides supervision. This is a

requirement of both Michigan's Youth Employment Act and the Health and Safety (MIOSHA) standards.

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### **Fair Housing Act** (FHA)

The Fair Housing Act, as amended in 1988, prohibits housing discrimination on the basis of race, color, religion, sex, disability, family status and national origin. Its coverage includes private housing, housing that receives Federal financial assistance, and State and local government housing. It is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. Other covered activities include, for example, financing, zoning practices, new construction design, and advertising.

The Fair Housing Act requires owners of housing facilities to make reasonable exceptions in their policies and operations to afford people with disabilities equal housing opportunities. For example, a landlord with a "no pets" policy may be required to grant an exception to this rule and allow an individual who is blind to keep a guide dog in the residence. The Fair Housing Act also requires landlords to allow tenants with disabilities to make reasonable access-related modifications to their private living space, as well as to common use spaces. (The landlord is not required to pay for the changes.) The Act further requires that new multifamily housing with four or more units be designed and built to allow access for persons with disabilities. This includes accessible common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units.

Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development.



For more information or to file a complaint, contact:

**Office of Program Compliance and Disability Rights**

**Office of Fair Housing and Equal Opportunity**

**U.S. Department of Housing and Urban Development**

**451 7<sup>th</sup> SW (Room 5242)**

**Washington, D.C. 20140**

You may also call the Fair Housing Information Clearinghouse at:

**(800) 343-3442 (voice)**

**(800) 483-2209 (TDD)**

Fair Housing Information Clearinghouse website:

[http://www.cvoeo.org/htm/Housing/fair\\_housing/Fair\\_Housing\\_Clearinghouse.html](http://www.cvoeo.org/htm/Housing/fair_housing/Fair_Housing_Clearinghouse.html)

Additionally, the Department of Justice can file cases involving a pattern or practice of discrimination. The Fair Housing Act may also be enforced through private lawsuits.

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**Americans With Disabilities Act (ADA)**

This act was signed in Law in 1990.

This law guarantees equal opportunity for people with disabilities.

Effective July 26, 1994, this law applies to employers with 15 or more employees.

A person is considered to have a disability if they have a physical or mental impairment that substantially limits a manual task, walking, caring for oneself, learning or working.

Employers cannot require an applicant to take a medical exam prior to making a job offer, but an employer can ask an applicant to demonstrate how the applicant will perform a job related function. They can also require a drug test. Once hired, the employee cannot be required to complete a medical exam unless it is job related and necessary for the conduct of the business.



## Progress Check

- What does the Fair Labor Standards Act establish?
- What is the definition of an employer?
- Who needs a work permit in the state of Michigan?

# Business of Building



1

## **Bidding and Estimating**

ESTIMATING	BIDDING	PROJECT BUDGET	CHANGE ORDERS
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### ***Learning Objectives***

***Understand the importance of accurate estimating and bidding.***

***Describe the steps in developing a project budget.***

### **Estimating**

Construction estimating is the means of compiling all factors that will influence and contribute to the cost of completing a project. These factors should include labor, materials, equipment and subcontractors. Other things to consider are the degree of difficulty the job poses, the overhead involved and the profit expected.



### **Lump Sum Estimate**

This is a form of construction estimating in which a **fixed price is given for the entire project**. A contractor agrees to perform a prescribed package of work in full accordance with the drawings and specifications for one lump sum, even in the event that the actual cost to fulfill the contract is greater than the stipulated amount.

**Here is an example of a possible test question you may have.**

*At the completion of a new home project, the total cost to complete the home came in \$10,000 higher than expected. The contracted sales price was \$327,500.00. The builder bid the job at 8% profit margin. What profit margin did he end up with?*

*a. 3%      b. 3.8%      c. **4.9%**      d. 5.3%*

### **How to arrive at this solution:**

**Step 1** - figure out what 8% profit of \$327,500 would be:  
 $327,500 \times .08 = \underline{\$26,200}$

**Step 2** - Subtract \$26,200 from \$327,500 to get the original projected cost to build the home = \$301,300.

**Step 3** - Add \$10,000 to \$301,300 to get the new cost of building the home = \$311,300.

**Step 4** - Subtract \$311,300 from \$327,500 to get the new profit amount = \$16,200

**Step 5 (last step)** - Divide \$16,200 by \$327,500 to get the final percentage of profit margin = 4.9%

## Unit Price Estimate

This is a form of construction estimating that quotes a **given price for each unit of work**. Unlike Lump Sum, in Unit Price Estimating, a cost is assigned to each measurable item of work and these items are listed separately on the estimate.

With this form of estimating, a quantity survey must be conducted. This will serve as a basis for computing cost and will help check the accuracy of the architect's or engineer's estimates.

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## Bidding

**Private Bid** - The owner of a private property usually sets their own bidding procedures with the help of a design professional.

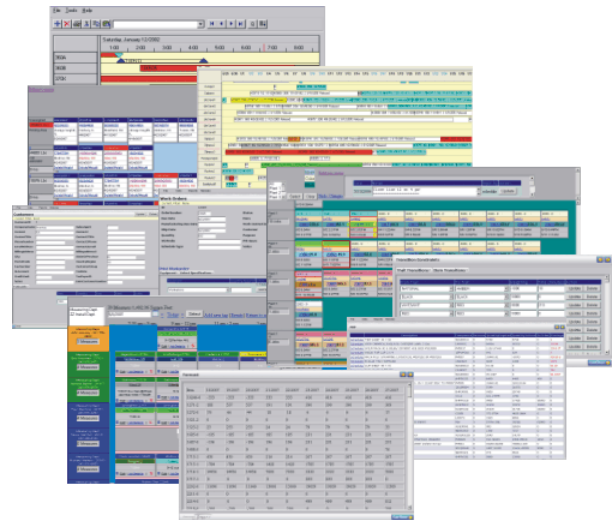
**Public Bid** - In all jurisdictions, laws regulate and control the award of public construction projects. These laws include

- A. Notice be given to all interested and qualified parties.
- B. All bidders must be treated equally.
- C. All bidders must be afforded the opportunity under the same terms and conditions.

**Pre-qualified Bid** - It is important that companies that are submitting bids be qualified. They must be able to demonstrate experience, competence and capacity. The company should have a credible financial history, be fully licensed, and be able to produce references.

### **Bidding and Estimating Software**

There is an abundance of bidding and estimating software on the market today. You can find packages that estimate the cost of small projects like purchasing and installing windows and large projects like entire three level homes. There are packages as low as \$39.00 on up to thousands of dollars. If you have a computer with the internet, simply search on "construction estimating software" or "construction bidding and estimating" and you will be exposed to every kind of software you can think of.



Here are a few samples of some of the most popular software used today:

1. Goldenseal Estimating Software by: Turtle Creek Software  
[www.turtlesoft.com](http://www.turtlesoft.com) (607) 272-1008

2. Bid4Build [www.bid4build.com](http://www.bid4build.com) (800) 865-9206

3. Work In Progress [www.dedicatedsoftware.com](http://www.dedicatedsoftware.com) (352) 385-0852

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## **Developing a Project Budget**

In order for a contractor to present a proposal to a customer they first have to create a cost estimate of the entire project. This estimate is the sum of the projected costs for each activity, from start to finish. Each activity has a projected cost associated to it. Managing this list of projected costs allows you to manage the cost of the entire project as it progresses.

Construction contracting is a very risky and competitive business. As contractors compete for business, their profit margins are reduced. This makes it even more important to have reliable estimates.

When a General Contractor is working up an estimate for a project, the budget is also being created. The general contractor will produce the individual estimates for tasks they intend to do themselves while the subcontractors provide estimates for the jobs subcontracted out.

Contemplating each progressive step in the path of a project, from start to finish, as well as the cost of labor, equipment and material associated with each step, is a tall order. Once you have realized each cost concern throughout the entire project, the estimate is complete, and so is the **budget**.

This budget will be reflected upon often while the project is underway. Contractors will be comparing actual costs to projected costs. If the contract is a Lump Sum Agreement, every dollar over budget means a dollar less in profit.

### **List of Steps:**

Develop a list of all of the tasks that will need to be completed during the project from start to finish.

1. Establish the cost for each task. This includes material costs, labor costs and equipment costs. Labor costs can come from your own historical records or from subcontractors.
2. Include **project overhead**, such as garbage removal, sanitary facilities, temporary electrical power, financing cost, manager salaries, cost of blueprints and any other costs that do not reflect production.
3. Include **company overhead**. It is reasonable for a company to charge the project for its own overhead for the percentage of actual company overhead the project utilizes. Overhead costs are office expenses, the maintenance cost of the facility where equipment is kept and maintained, electricity and any other costs incurred just by being in business.
4. Add for contingency costs.
5. Add for profit
6. Total all costs.



It is a common practice for estimators to consider when developing their estimate that there will likely be budget overruns because of situations that could not have been foreseen. Adding **contingency cost** into the budget from the start allows more flexibility to absorb these additional expenses without going over budget.



## **Profit**

Typically, people going into business as a home builder are more familiar with construction work than with being a business person.

When calculating the profit that your company needs to make for a project, that shouldn't include the wages you would charge against the project for your own time. The business itself

has to be building financial strength. As an owner, you should be drawing a wage from the company. This wage may be a bit higher in good times and a bit lower in lean times. If no efforts are taken to make the company itself become financially strong, able to withstand the downturns that will happen in this industry, the business may fail.

As the business bank account starts to increase, investments can be made to improve the production capabilities of your company and your company will begin to grow. These investments may include better tools, more manpower, office staff or even a salesperson to promote your company.

The profit that you charge should be relative to the degree of difficulty the project entails. If

### **Key Point:**

**More contractors fail in their efforts to develop a successful construction company because they are poor business people, not poor craftsmen.**



the contract has disclaimers that cause the contractor to assume more liability, then the profit margin should increase. Profit margins range from 5% to above 20%, given the differing circumstances. Keep in mind, **profit** is not a bad word.

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## **The Importance of Change Orders**

What constitutes a change and how changes may be billed should be provided for in the contract. Not having an appropriate agreement worked out prior to commencement of work could result in misunderstandings.

The goal is to be businesslike instead of complacent, even for small issues. If a cost was not recognized in the original specifications, then you haven't accounted for it in your estimate.

### **Key Point:**

**It is critical to be very attentive to the use of change orders. Whenever you are presented with an additional cost or possibly reduced costs, formalize this situation with a change order.**

Many contractors learn about how important change orders are the hard way. For example, a customer requests additional work after the start of construction and the contractor goes ahead and complies with the customer's request without addressing the additional funds needed to cover the costs. Often the customer will react negatively when approached about the additional cost if it is not spelled out at the time the request is made. If the customers are more than one person, like a husband and wife, all parties need to be made aware of the request and the additional cost to cover the request.

In any case, from this point, their opinion of you as a professional may be diminished. It may also be difficult for you to collect the additional funds.

If you always use Change Orders when these issues are presented, each individual situation would be worked out between you and your customer beforehand. The likelihood that you would be paid the additional funds is excellent, without any misunderstandings. Also, you will be able to profit from this additional work.

**Key Point:**

**Always put the request in writing through a Change Order with the signatures of all parties. Without Change Orders, customers don't have to oblige your request because you didn't get their written approval for these additional costs.**

## Progress Check

- What is the difference between a lump sum estimate and a unit price estimate?
- Describe the process of developing a budget--including contingency costs.



# **Lead Paint Safety**

## **Renovation, Repair and Painting**

### ***Learning Objectives***

***Identify the health hazards associated with lead paint.***

***Recognize the responsibilities of a contractor when working with lead paint.***

There have been several phases in the history of lead based paint, and the regulation of it through public policy. As early as the 1900's lead paint was recognized as a hazard—in particular, to children. It has taken close to a century to legislate and implement regulations that meet standards to reduce the risk of lead-paint poisoning.

Lead-paint, or lead-based paint contains lead—a heavy metal; “white lead” being the most commonly manufactured. Lead is added to pigment paint, to add durability, increase drying time and resist moisture. In 1978, the Consumer Products Safety Commission banned the sale of lead-based paint for residential use. In practice, this means that homes built in 1978 could still have

used lead-based paint, because existing supplies of paint containing lead would still have been available. Consider:

- 86% of pre-1940 homes contain lead-based paint on at least one surface.
- 66% of homes built from 1940 to 1959 contain lead-based paint on at least one surface.

The risks associated with exposure to lead-based paint have been well documented over the last several years. Lead exposure is a major health and environmental hazard. It is especially damaging to children under the age of six—and can cause nervous system damage, stunted growth and delayed development. Pregnant women are at risk, as well as adults who may experience reproductive repercussions.

### **A Summary of Health Effects in Children and Adults: Children-**

-Children, particularly children under age 6, are most at risk from small amounts of lead. A tiny amount of lead can be extremely harmful.

-For children, the major route of entry of lead into the body is through ingestion of leaded dust by normal hand-to-mouth contact as they swallow dust from their hands, toys, and other things they put in their mouths. Children may also ingest paint chips. Such activities may include: handling toys followed by putting fingers into the mouth; directly soiling hands while crawling; and, using window sills to pull themselves up.



-Children's bodies absorb a much greater percentage (~50%) of the lead that they ingest or breathe, compared to adults (~10%).

-In children, lead can cause:

-Decreased intelligence, attention deficit disorder and learning disabilities.

-Behavioral problems.

-Nervous system and kidney damage.

-Speech and language problems.

While low-lead exposure is most common, exposure to high levels of lead can have devastating effects on children, including seizures, unconsciousness, and, in some cases, death. Many studies suggest that once lead has damaged a child, the damage is permanent. You can remove the child from the exposure but the damage remains.

## **Adults-**

-For most adults, the major route of entry of lead into the body is through inhalation (breathing) of leaded dust via occupational exposures. Leaded-dust particles are often so small that you cannot see them, yet you can breathe or swallow them. Adults can swallow or breathe dust during work activities. When workers perform activities such as scraping and sanding by hand, or use a power sander or grinding tool, dust is created. The dust goes into the air that they breathe. If workers eat, drink, smoke or put anything into their mouths without washing up first, they may swallow the leaded dust present. These smaller, inhaled or swallowed dust particles are more easily absorbed by the body than larger particles, and can therefore more easily cause poisoning.

**In adults, lead can cause:**

- High blood pressure.
- Fertility problems in both men and women.
- Digestive problems.
- Nerve disorders.
- Sexual disorders.
- Memory and concentration problems.
- Muscle and/or joint pain.

### **In pregnant women:**

- Lead in their blood is transferred to the fetus (unborn child).
- Harm to the fetus may include brain damage and death.

The signs and symptoms of lead poisoning are easily misdiagnosed by medical personnel, thus delaying effective treatment and increasing the likelihood of permanent physical and mental damage. You should let your doctor know about your work history and any lead related exposures in order to receive an accurate diagnosis and proper treatment. **The point to emphasize is that even small amounts of lead in the blood are cause for concern. Dust and debris from renovation, repair, and painting jobs in pre-1978 housing and child-occupied facilities may contain lead.**

Traditional renovation work can create significant dust-lead hazards if lead-based paint is disturbed. Changes in work place practices can minimize and contain harmful dust. The use of lead-safe work practices makes the job safer and reduces your liability exposure. Any activity involving surface preparation, such as hand-scraping, power sanding, the use of heat guns above 1100° Fahrenheit, and open flame burning, can generate lead dust. More complicated tasks such as removing building components and demolishing walls also can create a lot of dust. **A little dust goes a long way.** One gram of lead-based paint can contaminate a large area!



- **You can't see it.** Even a floor that looks clean can have leaded dust on it. Only a laboratory test can tell you for sure if an area is contaminated with lead.
- **It's hard to sweep up.** Normal cleaning methods will not pick up all the dust in a work area. Sweeping is not enough. You need to use water, detergent and a HEPA vacuum to clean up dust effectively.
- **It travels.** Once dust is released, it is easily tracked around, inside and outside the work area. And, an exterior painting job can contaminate the inside of a home as the dust, chips and leaded soil are tracked inside.

### **EPA Requirements**

Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children.

To protect against this risk, on April 22, 2008, the EPA issued the [Renovation, Repair and Painting Rule](#). It requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in pre-1978 homes, child care facilities and schools be certified by the EPA and that they use certified renovators who are trained by EPA-approved training providers to follow lead-safe work practices. Individuals can become certified renovators by taking an eight-hour training course from an EPA-approved training provider.



The rule affects paid renovators who work in pre-1978 housing and child-occupied facilities, including:

- Renovation contractors
- Maintenance workers in multi-family housing
- Painters and other specialty trades.

Under the rule, child-occupied facilities are defined as residential, public or commercial buildings where children under age six are present on a regular basis. The requirements apply to renovation, repair or painting activities. The rule generally does not apply to minor maintenance or repair activities where less than six square feet of lead-based paint is disturbed in a room or where less than 20 square feet of lead-based paint is disturbed on the exterior, but **this does not include window replacement, demolition, or prohibited practices.**

#### **Educate Owners and Residents**

##### **The Pre-Renovation Education Rule:**

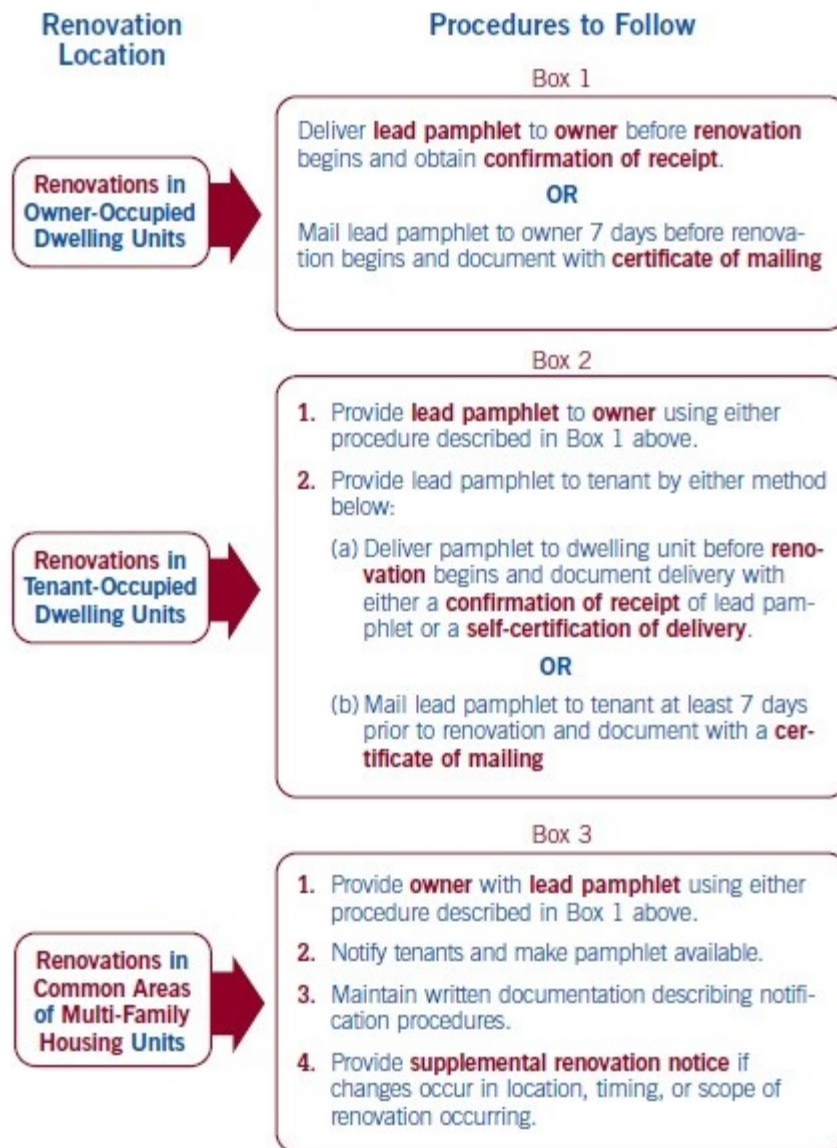
- Requires Renovation Firms to provide the **lead hazard information pamphlet** ***Renovate Right: Important Lead Hazard Information for Families, Child Care Providers, and Schools (PDF)*** pamphlet to owners/residents prior to renovation activities in pre-1978 housing and child-occupied facilities.
- Specifies requirements for educating residents/occupants and delivering the *Renovate Right* pamphlet that vary by type of property and the area being renovated.



**Under the RRP Rule, Certified Firms MUST:**

- Give homeowners/residents and child-occupied facility owners/adult representatives copies of the *Renovate Right* pamphlet.
- Let parents/guardians of children using a child-occupied facility know about the renovation and how to get a copy of the *Renovate Right* pamphlet.
- **Get confirmation** of receipt of the *Renovate Right* pamphlet from owners, or evidence that the pamphlet was delivered to tenants/residents.
- Keep all records for at least 3 years.

## How Do I Meet The Lead PRE Requirements?



**\*\*EPA The Lead Based Paint Pre-Renovation Education Rule**

<http://www.epa.gov/lead/pubs/interiorfinal2.pdf>

## Sample Pre-Renovation Form

This sample form may be used by firms to document compliance with the requirements of the Federal Lead-Based Paint Renovation, Repair, and Painting Program.

### Occupant Confirmation

#### Pamphlet Receipt

\_\_\_\_ I have received a copy of the lead hazard information pamphlet informing me of the potential risk of the lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

---

Printed Name of Owner-occupant

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Signature of Owner-occupant

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Signature Date

#### Renovator's Self Certification Option (for tenant-occupied dwellings only)

Instructions to Renovator: If the lead hazard information pamphlet was delivered but a tenant signature was not obtainable, you may check the appropriate box below.

\_\_\_\_ **Declined** – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below at the date and time indicated and that the occupant declined to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

\_\_\_\_ **Unavailable for signature** – I certify that I have made a good faith effort to deliver the lead hazard information pamphlet to the rental dwelling unit listed below and that the occupant was unavailable to sign the confirmation of receipt. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door or by (fill in how pamphlet was left).

---

Printed Name of Person Certifying Delivery

---

Attempted Delivery Date

---

Signature of Person Certifying Lead Pamphlet Delivery

---

Unit Address

**Note Regarding Mailing Option** — As an alternative to delivery in person, you may mail the lead hazard information pamphlet to the owner and/or tenant. Pamphlet must be mailed at least 7 days before renovation. Mailing must be documented by a certificate of mailing from the post office.

The EPA, in consultation with the Centers for Disease Control and Prevention (CDC), jointly developed a lead hazard information pamphlet entitled ***Protect Your Family From Lead in Your Home*** ("PYF") (Ref. 7). This pamphlet was designed to be distributed as part of the disclosure requirements to provide owners and occupants with the information necessary to allow them to make informed choices when selecting housing to buy or rent, or deciding on home renovation projects. The pamphlet contains information on the health effects of lead, how exposure can occur, and steps that

can be taken to reduce or eliminate the risk of exposure during various activities in the home.

<http://www.epa.gov/lead/pubs/leadpdfs.pdf>

### **Progress Check**

- Describe how lead exposure differs in symptoms and effects between children and adults.
- Who must be lead-safe trained and certified at a RRP job-site?
- What are the responsibilities of the contractor when preparing for a renovation/repair or painting project?