

MICHIGAN BOATING INDUSTRIES ASSOCIATION

PROCEDURES FOR FILING A LIEN

Summary of the Michigan Marina and Boatyard Storage Lien Act

A marina, boatyard, boat or yacht club, or marine repair facility that provides for the storage or repair of boats, boat motors, boat cradles, or boat trailers has a possessory lien on such property stored at the facility for storage, rent, labor, materials, supplies and other charges and for expenses reasonably incurred in the sale of that property under the act. A facility owner must notify the property owner and all prior lienholders of the lien created under the act before enforcing the lien. The property owner is notified if either of the following has occurred:

- a) The property owner has signed a written storage agreement that includes a notice of the lien created in the act, or
- b) The facility owner has mailed notification of the lien to the property owner and all lienholders. In most cases, the facility owner will need to first complete step one below to receive a list of the lienholders on record. If the written storage agreement does not include a notice of lien as set forth in Section a above, the notice of lien will not take priority over a prior lienholder for storage charges incurred before 30 days after the notice of lien is delivered to the prior lienholder.

To enforce a lien created by the act, the facility owner must complete the following steps:

1. After a default has continued for more than 180 days, the facility owner shall mail a notice of default to the property owner and the Michigan Secretary of State (or if registered outside of Michigan, to the other state or federal agency responsible for registration or documentation) by registered or certified mail return receipt requested. The notice must include the following:
 - A statement that the property is subject to a lien held by the facility owner.
 - A statement of claim listing the charges due when the notice was prepared, the amount of any additional charges that will come due before the date of the sale, and the date those additional charges will come due.
 - A demand for payment of the charges due. Specify a date by which the charges must be paid. By law, at least 30 days must be given from the date the notice is delivered to the owner and all lienholders. Because the lienholder information will come from the Secretary of State, there may be a delay between notification to the property owner and all lienholders of record.
 - A statement that the property will be sold if the claim is not paid by the deadline stated in the notice. The notice should include the time and location of the sale.
 - The name, street address, and telephone number of the facility owner, or the facility owner's designated agent, whom the property owner can contact to respond to the notice.

After receiving the notice from the facility owner, the Secretary of State will mail a statement of compliance to the facility owner including the name of the registered owner of the vessel and a list of all lienholders on file with the Secretary of State.

All notices to the Secretary of State must be mailed by registered or certified mail, return receipt requested. Inquiries and notices should be directed to:

Michigan Secretary of State OSRS Unit
7064 Crowner Drive
Lansing, MI 48918
Phone: (517) 322-1473

If the owner of the vessel cannot be determined because of the condition of the vessel or because a check of the records does not reveal ownership, the facility owner may send notice to the person who delivered the property to the facility, if known, at their last known address, and shall also publish in a print or an electronic version of a newspaper of general circulation a notice containing all the notice of default information, including a description of the property.

2. After waiting at least 30 days from the date of notice of default, publish an advertisement of the sale once a week for two consecutive weeks in a newspaper of general circulation in the area where the sale is to be held. The advertisement must include:

- A description of the property.
- The name of the property owner.
- The time and location of the sale. The date of the sale must be at least 15 days after the first advertisement of the sale is published. The sale must be held at the facility or at another reasonable location.

3. Sell the property at a "commercially reasonable" public sale. Sign the property over to the purchaser using the BDVR-157 Statement of Compliance and Bill of Sale form provided by the Secretary of State. The purchaser may take this form to any Secretary of State branch office to register and title (if necessary) the vessel or the vessel and accompanying trailer in their name. The facility owner may bid all or a portion of his or her claim at the auction sale of the property.

If the vessel was originally registered in a state other than Michigan, the Secretary of State shall notify the other state that a new title is issued when such title is issued to the facility owner or purchaser at auction sale.

****IMPORTANT****

Any time before the sale of property under the act, the property owner may cure the default by paying to the facility owner the amount of the lien or other amount that is accepted by the facility owner as payment in full. Lienholders may also redeem the vessel by paying the lesser amount of the lien created by the act or of the following amounts specified by statute:

Length Vessel	Amount Due
27 feet or less	\$5,000 or 20% of fair market value, whichever is less
over 27 feet to and including 40 feet	\$30,000
over 40 feet to and including 60 feet	\$75,000
over 60 feet	\$90,000
Exceptions to these amounts:	
Double the amounts above if:	The expenditure for labor and materials is for both primary power engines of a vessel equipped with 2 engines. This does not apply to auxiliary propulsion or trolling engines.
Reduce by 1/2 the amounts above if:	More than half the expenditure for labor and materials is only for the repair or replacement of either: <ul style="list-style-type: none"> ◆ Navigational electronics ◆ Auxiliary power generators
Reduce by 3/4 the amounts above if:	More than half the expenditure for labor and materials is only for one of the following: <ul style="list-style-type: none"> ◆ Repair or replacement of a cabin interior ◆ Painting ◆ Cosmetic work ◆ Any combination of these three items

The facility owner must maintain proof of compliance with the law. However, the returned mail receipts and proof of advertising are not required to be submitted to the Secretary of State, but should be retained by the facility owner. If an investigation results from any lien filed, the facility owner must provide proof of compliance in all areas of the law.

Documented Vessels

The act does not create a lien on a documented vessel subject to a preferred ship mortgage or other preferred maritime lien pursuant to chapter 313 of subtitle III of title 46 of the United States Code, 46 U.S.C. 3130 1 to 31343. Before proceeding against a documented vessel, you must obtain an abstract of title from the United States Coast Guard.

If a documented vessel is sold pursuant to the act, the facility owner shall satisfy the United States Coast Guard requirements for passage of title by operation of state law under 46 C.F.R. 67.91. These requirements include providing to the Coast Guard all of the following:

- ▶ A copy of the Michigan Marina and Boatyard Storage Lien act.
- ▶ An affidavit from the facility owner setting forth the grounds for selling the property and the steps taken to comply with the Michigan act.
- ▶ Evidence of compliance with the act.
- ▶ A bill of sale in recordable form from the facility owner as an agent for the property owner.

For more information on documented vessels, contact the United States Coast Guard.

The information provided above is a general summary of the Michigan Marina and Boatyard Storage Lien Act being provided by the Michigan Boating industries Association. It should not be considered legal advice. You should be sure to discuss the procedures with your own legal counsel before beginning any foreclosure process. Additional questions can be addressed to the Michigan Secretary of State office.