



THE SWORN STATEMENT AND WAIVER OF LIEN GUIDE

The Construction Loan Company, Inc. (CLC) follows the Construction Lien Acts for each individual state. This means that whenever CLC loans money for construction, the borrower must also adhere to the rules and guidelines set forth in this guide. Any variations to these rules can cause an immediate freeze on your construction funds.

Construction Lien Acts in most states require that a contractor, subcontractor, supplier or laborer who provides an improvement to real property shall have a construction lien interest on the property owned by the owner or lessee who contracted for the improvement to the real property. **This lien can attach to the property regardless of whether the owner paid the contractor in full for all of such improvements (i.e., the contractor failed to pay all of its subcontractors, suppliers, and/or laborers – this may not apply in some states). The following is a summary of the procedures and guidelines which must be followed in order to prevent construction liens being attached to your property or real estate:**

1. Before the commencement of any physical improvements to the property, the owner must record a “Notice of Commencement” with the Register of Deeds office. The Title/Escrow Company may complete this on your behalf at your construction loan closing. The owner should verify that the Title/Escrow Company is recording the Notice of Commencement on your behalf.
2. The owner must deliver a copy of the Notice of Commencement to the General Contractor (if applicable by state law).
3. The owner must post and keep a copy of the Notice of Commencement in a visible location during the course of construction at the subject property site (if applicable by state law).
4. Within ten (10) days after a subcontractor, supplier, or laborer mails a written request called a **Notice of Furnishing** or **Notice to Owner** (via certified mail), the owner must provide such person with a copy of the Notice of Commencement.
5. Before making any payments to the contractor, the owner must obtain a Sworn Statement from the contractor which lists the names, addresses and contact information of all subcontractors, suppliers and laborers; the type of work performed on the property, and whether such parties have been paid in full. **(If you are acting as your own General Contractor on the property, you will be responsible for the Sworn Statement. A copy of this along with the waivers can be obtained from CLC at www.loantobuild.com/forms.asp)** The owner must compare this list with any **Notice to Owner** or **Notice of Furnishing** that they received from any subcontractor, supplier or laborer. If the Sworn Statement shows that any party has not been paid in full or if the owner received a Notice to Owner or Notice of Furnishing from parties not named on the Sworn Statement, the owner should withhold payments in an amount adequate to cover these amounts.
6. If payment is made directly to a subcontractor, supplier or laborer the owner should obtain a full unconditional waiver of lien directly from such party.

NOTICE OF COMMENCEMENT

A **Notice of Commencement** is a form prescribed by state law, which informs all interested parties of the commencement of construction. As noted above, the owner must deliver a copy of the Notice of Commencement to the contractor and, if requested, to all subcontractors, suppliers or laborers who make improvements on the property. The Notice of Commencement should be delivered to the contractor before any work is performed and should be delivered to the other parties within ten (10) days after they mail a written request for the Notice of Commencement. Failure to comply with these timetables could result in extending the period of time by which subcontractors, supplier or laborers must deliver a Notice to Owner or Notice of Furnishing.

In order to establish the time at which the Notice of Commencement has been delivered, all of such deliveries should be made by certified mail or by hand delivery.

If hand delivery is made, the requesting party should be asked to sign a receipt which indicates the date of receipt. If the time for delivering the Notice of Commencement has not been met (and the deadline for filing a Notice to Owner or Notice of Furnishing has been extended), make sure that all parties who have requested a copy of the Notice of Commencement are identified on the Sworn Statement. If they are not, a portion of the amount owed to the contractor should be withheld in an amount sufficient to cover the amounts owed to these parties.

NOTICE TO OWNER / NOTICE OF FURNISHING

Subcontractors, suppliers or laborers are required to deliver a Notice to Owner or Notice of Furnishing to the owner or its agent within a certain period of time after the improvement to the property is made. A Notice to Owner or Notice of Furnishing is a document by which the owner is notified of the subcontractors, suppliers or laborers who contribute to the improvements on the property.

PAYMENTS

Before any payments are made to the contractor or any other party, the owner should obtain a Sworn Statement from the party requesting payment ("Payee"). The Sworn Statement must conform to the statutory requirements and must include a list of each subcontractor, supplier or laborer ("Sub-Payees") with whom the Payee has contracted.

After the owner receives the Sworn Statement, the owner should compare the names on the Sworn Statement with the Notice to Owner or Notice of Furnishing, which has been received. If the Sworn Statement fails to list any party from whom a Notice to Owner or Notice of Furnishing has been received, or if the Sworn Statement indicates that a party has not been paid in full for services or supplies furnished, the owner should withhold a sufficient amount from the amount requested by the Payee to cover the amounts owed to such parties.

If the owner pays any Sub-Payee(s) directly, the owner should give five (5) days written notice to the Payee. The owner should not make the payments to the Sub-Payee(s) until five days after such notice has been delivered. If the owner withholds from the Payee amounts owed to Sub-Payee(s) and pays them directly, the owner should obtain either a partial or complete unconditional waiver of lien from the Sub-Payee(s).

An owner may rely on a Sworn Statement prepared by a party other than himself to avoid a claim of a subcontractor, supplier or laborer unless the subcontractor, supplier or laborer has provided a Notice to Owner or Notice of Furnishing or the filing of a Notice to Owner or Notice of Furnishing has been excused due to the owner's failure to comply with the time limits of delivering a copy of the Notice of Commencement.

SWORN STATEMENT

Sworn Statement and Waivers of Lien forms can be obtained directly through CLC or any Title/Escrow Company.

1. Fill in all the blanks on the two pages of the Sworn Statement.
2. List all subcontractors, suppliers or laborers who provided labor or delivered materials; include their address and contact information on the 2nd page of the Sworn Statement.
3. If an item does not apply (i.e. there is no fireplace) write “N/A” or not applicable, in the space next to that item.
4. The columns to be completed include: **Total Contract Price, Adjustment to Contract Price, Amount Already Paid, Amount Currently Owing, and Balance to Complete.** The individual amounts should be listed separately for each subcontractor, supplier or laborer on the Sworn Statement.
 - **Total Contract Price** - Is the total cost for the improvement to the property (subcontractor/supplier’s services, materials and/or labor).
 - **Adjustment to Contract Price** – Any price changes (higher or lower) that occur from the original contract price should be entered in this column. If the price has increased from the original contract price, indicate the amount of “price difference” in this column and use a **plus** sign. If the price has decreased from the original contract price, include the amount of the “price difference” in this column and use a **minus** sign.
 - **Amount Already Paid** - Is the amount that the subcontractor/supplier has been paid to date.
 - **Amount Currently Owing** - This is your current draw amount. It is the amount that is owed to your supplier/subcontractor for labor or material in place but not yet paid for.
 - **Balance To Complete** - This is the remaining dollar value of labor and/or material to be completed.
5. These columns described above must be totaled as follows: **Amount Already Paid + Amount Currently Owing + Balance to Complete must equal (=) Total Contract Price plus/minus any Adjustment to Contract Price.**
6. The Sworn Statement must be signed at the bottom of the first page above the deponent line. **The Sworn Statement must be notarized - do not sign until in the presence of a Notary.**
7. To ensure that your construction loan closing or a construction loan draw will not be delayed, the Sworn Statement and applicable waivers should be submitted to the Title/Escrow Company and CLC at least five (5) working days before the closing. This will provide ample time for a construction draw at closing.

****** NOTE: If you are unsure how much it will cost to complete certain items on the Sworn Statement, fill in an amount that is an “average” from your bids/estimates for that item under “Balance to Complete”. If you are unsure as to whom will provide the labor or materials, simply write TBFL (To be furnished later). It is very important to remember that if your “Total Contract Price” on the Sworn Statement is more than your construction loan amount; you will be required to make up that difference from your personal funds (not construction funds) before your draw can be processed.**

WAIVERS OF LIEN

1. A **Waiver of Lien** must be submitted for everyone listed on the Sworn Statement.
2. All **Waivers of Lien** must contain original signatures. Copies may be submitted to CLC in order to process your draw.
3. **Waivers of Lien** must be completely filled out, including the name of the General Contractor or Homeowner with whom the contract is with, the labor and/or materials provided, the legal description (subject property address, the lot # or subdivision lot # and the county) and the name, address and phone number of the signing company. The person signing the waiver must be an officer of the company or an authorized agent of the company. The date must also be included.
4. The **Statement of Account** section must be completed in its entirety. Original Contract Price + Extras – Credits – Previous Payments – Retention = Balance – This Payment = Balance to Become Due.
5. A **Waiver of Lien** must be submitted by the General Contractor or Homeowner (if Homeowner is acting as their own General Contractor), for all work under contract.
 - ◆ **Partial Conditional Waiver of Lien - The subcontractor/supplier has completed part of the contract but has not been paid for the completed work.** The waiver of lien must state the amount that is owing to date and the date that the subcontractor / supplier are waiving his/her lien rights through (provided they are paid the amount on the waiver). The date on this waiver of lien must also be close to the date on the Sworn Statement. What is listed on this waiver of lien as owing must appear on the Sworn Statement under “Amount Currently Owing” (this is your draw request column). The dollar amount of the labor or material that remains to be completed should appear on that subcontractor’s/supplier’s line under “Balance to Complete”. After the subcontractor or supplier has been paid then a **“Partial Unconditional Waiver of Lien”** will need to be submitted as proof that the subcontractor/supplier received the amount owed to him/her. The revised Sworn Statement should reflect the amount paid under the “Amount Already Paid” column on the Sworn Statement. Note: “Amount Already Paid” column + “Amount Currently Owing” column + “Balance to Complete” column should = “Total Contract Price” column (plus any Adjustments).
 - ◆ **Partial Unconditional Waiver of Lien- The subcontractor/supplier has completed part of the contract and has been paid for the work that is done.** The waiver of lien must state the amount that has been paid to date and the date that the subcontractor / supplier are waiving his/her lien rights through. This date and amount must be very close to the date on the Sworn Statement and the amount listed under “Amount Already Paid”. The dollar amount of labor/material that remains to be completed should appear under that subcontractor’s line under “Balance to Complete”. Note: “Amount Already Paid” column + “Amount Currently Owing” column + “Balance to Complete” column should = “Total Contract Price” column (plus any Adjustments).
 - ◆ **Full Conditional Waiver of Lien - The subcontractor/supplier has completed the contract; however, is still owed money.** The exact amount owed must be filled in on the waiver of lien and this amount must be the same as what is listed on the Sworn Statement under “Amount Currently Owing”. The “Balance to Complete” should reflect zero balance. Once the subcontractor/supplier has been paid in full then a “Full Unconditional Waiver of Lien” will be required.
 - ◆ **Full Unconditional Waiver of Lien - The subcontractor/supplier has furnished all the labor and/or material per the contract and has been paid in full.** A Full Unconditional Waiver of Lien will be required to close out each line item on the Sworn Statement. All original Final Unconditional Waivers of Lien will need to be turned into CLC before CLC/MHLS can provide your permanent financing. The “Balance to Complete” should reflect a zero balance.

CONCLUSION

Avoiding construction liens requires strict adherence to the requirements of your state's lien acts. The failure to follow these requirements could result in a lien being placed on your property, and the possibility of paying twice for the same improvements to your property. It will also hold up any further draw requests, and could cost you thousands of dollars in interest payments.

CLC wants to make sure that building your home will be a rewarding experience. If you have any questions regarding the above information, please feel free to call our Construction Department at **1-877-562-6862**.

It is important that you understand this is an informational guide in helping you with your draw requests. Title/Escrow Company's policies may vary and may require something different than stated in this guide. The Sworn Statement and Waivers of Lien forms that you will be using are accepted and standard with all Title/Escrow Companies. Please feel free to call CLC's Construction Loan Department and we will be happy to lead you to the nearest Title/Escrow Company in the county in which you will be building.

THANK YOU,

THE CONSTRUCTION LOAN COMPANY, INC.

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