

## NINETY MEANS NINETY

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The Michigan Construction Lien Act (CLA) requires that a Claim of Lien be recorded with the Register of Deeds within **90** days of the last date of work. Some have argued that the statute permits the extension of this time period if there is “substantial compliance” with the CLA. In a recently decided case, the Michigan Supreme Court ended this debate and ruled that the “substantial compliance” provision of the CLA does not apply to the rule that a Claim of Lien must be recorded within **90** days of the last date of work. The Court said that lien claimants must strictly comply with the **90** day deadline.

What does this ruling mean? If you deliver the Claim of Lien to the Register of Deeds on the ninetieth day and the Register of Deeds refuses to accept it for recording because the legal description is incorrect, the required spacing on the top and side margins is incorrect, or you don't have a parcel identification number, you are out of luck. If you try two or three times to record the Claim of Lien without success prior to the expiration of the **90** day period but the lien is rejected by the Register of Deeds due to technical or other difficulties, you are out of luck. If you finally obtain the Register of Deeds' approval to record the Claim of Lien on the 91<sup>st</sup> day after the last date of work, you are out of luck, regardless of your prior vigorous efforts to record the Claim of Lien.

Does the Supreme Court's ruling mean that every deadline in the CLA must be strictly adhered to if you want to avoid doom? What about the requirement that the Claim of Lien be served upon the owner or lessee within 15 days of the recording of the Claim of Lien? The answer is we don't know for certain - but it's better to play it safe than be sorry when it comes to such an important protection as your lien rights.

Here are some tips to minimize having a problem with the **90** day recording deadline:

1. Keep a proper Claim of Lien form in your files.
2. When completing the Claim of Lien form, if you have any questions as to how to complete the form or if there are any unusual circumstances, call your lawyer.
3. Don't wait until the last day or even the last week to record your Claim of Lien. If there is a problem, you want to be certain that you have enough time to correct the problem.
4. Keep track of the last date of your work on each job. If you get to sixty days without payment in full, dust off your Claim of Lien form and start obtaining the information you need so you have plenty of time to deal with problems. When you've filled out the form, if you have any questions, fax the form to your lawyer and get his comments.

Remember, the Construction Lien Act is for your protection. Don't lose this important right.

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