



When Is A House Not A Home?

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The Michigan Construction Lien Act gives homeowners additional protections from the imposition of a construction lien during the construction of their home. The Construction Lien Act limits a contractor's right to a construction lien in regard to work performed on residential structures.

A contractor does not have a right to a construction lien on the interest of an owner or lessee in a residential structure unless the contractor has provided an improvement to the residential structure pursuant to a written contract between the owner or lessee and the contractor and any amendments or additions to the contract are also in writing. MCLA § 570.1114.

Thus, the question becomes what constitutes a "residential structure" within the meaning of the Construction Lien Act.

The Michigan Court of Appeals recently addressed this issue in *Karaus v Bank of New York Mellen*. In that case, there was no written contract between the owner of the home that was built and the contractor who built the home. The owner paid the contractor \$80,000.00. The contractor subsequently recorded a claim of lien against the property in the amount of \$325,000.00. Because there was no written contract between the owner and the contractor, the Court had to determine whether the home was a residential structure. If it was, the lien is unenforceable because there was no written contract between the parties. If it was not a residential structure, the lien most likely would be enforceable.

The Court began its analysis by looking at the Construction Lien Act's definition of a "residential structure." A "residential structure" is defined in the Act as "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." MCLA § 570.1106(3). Relying upon two cases decided in the 1980s, the court reasoned that

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"the determining factor in regard to whether a property constitutes a 'residential structure' or a commercial property is whether the owner or lessee contracting for the improvement *intends* to actually reside on the property upon completion of construction." The "intent to reside in a structure is a prerequisite to that structure being a residential structure." Because there was a factual dispute as to whether the owner of the property intended to reside at the property upon completion of the home, the Court of Appeals sent the *Karaus* case back to the trial court for a determination on this point.

In reaching its decision, the Court compared two prior Court of Appeals' decisions. In *Kitchen Suppliers v Erb Co.*, the Court found that property owned by a building company was a "residential structure" even though the building company did not intend to reside on the property upon completion of a home being built because a third party contracted with the building company to have a home built for them to reside in on the property.

In contrast, in *Titanus Cement Wall Co., Inc. v Watson*, the Court held that a single family residence was not a residential structure within the meaning of the Construction Lien Act because the owner who contracted for the improvements to the home did not intend to reside in it upon its completion.

IMPORTANT TAKEAWAY

The lesson to be learned from this case is that a contractor should always sign a written contract with the property owner before proceeding to construct a home on the property. The contractor should also determine whether the property owner intends on actually residing on the property. If the property owner intends to reside on the property, the home is a residential structure and the contractor must comply with the additional protections given to a homeowner under the Construction Lien Act. If the property owner has no intent to reside on the property, the improvement constitutes a commercial property subject to the general requirements for perfecting a claim of lien under the Construction Lien Act.

If you have any questions about what constitutes a "residential structure" under Michigan's Construction Lien Act, please contact Dirk Beckwith at Foster Swift.