



General Assembly

February Session, 2020

Raised Bill No. 5428

LCO No. 2370



Referred to Committee on BANKING

Introduced by:

(BA)

***AN ACT CONCERNING ISSUES RELATING TO MORTGAGES AND
MECHANIC'S LIENS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 49-8 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2020*):

3 (a) The mortgagee or a person authorized by law to release the
4 mortgage shall execute and deliver to the town clerk a release to the
5 extent of the satisfaction tendered before or against receipt of the release:
6 (1) Upon the satisfaction of the mortgage; (2) upon a bona fide offer to
7 satisfy the mortgage in accordance with the terms of the mortgage deed
8 upon the execution of a release; (3) when the parties in interest have
9 agreed in writing to a partial release of the mortgage where that part of
10 the property securing the partially satisfied mortgage is sufficiently
11 definite and certain; or (4) when the mortgagor has made a bona fide
12 offer in accordance with the terms of the mortgage deed for such partial
13 satisfaction on the execution of such partial release. Such mortgagee or
14 person authorized by law to release the mortgage shall deliver a
15 certified copy of such release to the mortgagor.

16 (b) The plaintiff or the plaintiff's attorney shall execute and deliver a
17 release when an attachment has become of no effect pursuant to section
18 52-322 or section 52-324 or when a lis pendens or other lien has become
19 of no effect pursuant to section 52-326.

20 (c) The mortgagee or plaintiff or the plaintiff's attorney, as the case
21 may be, shall execute and deliver a release within sixty days from the
22 date a written request for a release of such encumbrance (1) was sent to
23 such mortgagee, plaintiff or plaintiff's attorney at the person's last-
24 known address by registered or certified mail, postage prepaid, return
25 receipt requested, or (2) was received by such mortgagee, plaintiff or
26 plaintiff's attorney from a private messenger or courier service or
27 through any means of communication, including electronic
28 communication, reasonably calculated to give the person the written
29 request or a copy of it. The mortgagee or plaintiff shall be liable for
30 damages to any person aggrieved at the rate of two hundred dollars for
31 each week after the expiration of such sixty days up to a maximum of
32 five thousand dollars or in an amount equal to the loss sustained by such
33 aggrieved person as a result of the failure of the mortgagee or plaintiff
34 or the plaintiff's attorney to execute and deliver a release, whichever is
35 greater, plus costs and reasonable attorney's fees.

36 Sec. 2. (NEW) (*Effective October 1, 2020*) A mortgagee shall accept as
37 payment tendered for satisfaction or partial satisfaction of a mortgage a
38 bank check, certified check, attorney's clients' funds account check, title
39 insurance company check, wire transfer or any other form of payment
40 authorized under federal law.

41 Sec. 3. (NEW) (*Effective October 1, 2020*) (a) As used in this section:

42 (1) "Connecticut bank" and "Connecticut credit union" have the same
43 meaning as provided in section 36a-2 of the general statutes;

44 (2) "Periodic payment" means a payment in an amount sufficient to
45 cover principal, interest and, if applicable, escrow for a given billing
46 cycle;

47 (3) "Partial payment" means a payment in an amount less than a
48 periodic payment; and

49 (4) "Residential mortgage loan" has the same meaning as provided in
50 section 36a-485 of the general statutes.

51 (b) A periodic payment or a partial payment on a residential
52 mortgage loan issued by a Connecticut bank or a Connecticut credit
53 union on or after October 1, 2020, shall be accepted and credited, or
54 treated as credited, in accordance with the terms of the residential
55 mortgage loan, on the business day the payment is received, provided
56 (1) the payment is made where the borrower has been instructed in
57 writing to make payments, and (2) the borrower has provided sufficient
58 information to identify and credit the mortgage account.

59 Sec. 4. Section 49-37 of the general statutes is repealed and the
60 following is substituted in lieu thereof (*Effective October 1, 2020*):

61 (a) Whenever any mechanic's lien has been placed upon any real
62 estate pursuant to sections 49-33, 49-34 and 49-35, the owner of [that]
63 such real estate, or any person interested in it, may [make an application
64 to any judge of the Superior Court that the lien be dissolved] dissolve
65 such lien upon the substitution of a bond, [with surety, and the judge
66 shall order reasonable notice to be given to the lienor of the application.
67 If the lienor is not a resident of the state, the judge may order notice to
68 be given by publication, registered or certified letter or personal service.
69 If the judge is satisfied that the applicant in good faith intends to contest
70 the lien, he shall, if the applicant offers a bond, with sufficient surety,
71 conditioned to pay to the lienor or his assigns such amount as a court of
72 competent jurisdiction may adjudge to have been secured by the lien,
73 with interest and costs, order the lien to be dissolved and such bond
74 substituted for the lien and shall return the application, notice, order
75 and bond to the clerk of the superior court for the judicial district
76 wherein the lien is recorded; and, if the applicant, within ten days from
77 such return, causes a copy of the order, certified by the clerk, to be
78 recorded in the town clerk's office where the lien is recorded, the lien

79 shall be dissolved.] Such lien shall be dissolved by the owner of such
80 real estate, or any person interested in it, by lodging with the town clerk
81 of the town in which such real estate is situated, a bond, with sufficient
82 surety, conditioned to pay to the lienor or his assigns such amount
83 secured by such lien, plus interest, costs and attorney's fees. The town
84 clerk shall record the bond with deeds of land. The bond shall state that
85 it is a bond in substitution of a mechanic's lien pursuant to this section
86 and describe the premises, the amount of the lien thereon, the name or
87 names of the person against whom such lien was filed and the penal
88 sum of the bond being substituted for such lien. A bond with a penal
89 sum that is one hundred twenty-five per cent of the amount of the lien
90 for which it is being substituted shall be deemed sufficient surety for the
91 purposes of discharging such lien, except such amount shall not be a
92 limit on the lienor's potential recovery following a hearing. The owner
93 of such real estate shall serve a true and attested copy of the record of
94 the bond upon the lienor in the same manner as is provided for the
95 service of the notice in section 49-35. Whenever a bond is substituted for
96 any lien after an action for the foreclosure of a lien has been commenced,
97 the plaintiff in the foreclosure [may] shall amend his complaint, without
98 costs, so as to make the action one upon the bond with which the
99 plaintiff may join an action to recover upon his claim. Whenever a bond
100 is substituted for any lien before an action for the foreclosure of the lien
101 has been commenced, the plaintiff may join the action upon the bond
102 with an action to recover upon his claim. Whenever a bond has been
103 substituted for any lien, pursuant to this section, unless an action is
104 brought to recover upon the bond within one year from the date of
105 recording the certificate of lien, the bond shall be void.

106 (b) Whenever a bond has been substituted for any lien pursuant to
107 this section:

108 (1) The principal or surety on the bond, if no action to recover on the
109 bond is then pending before any court, may make application, together
110 with a proposed order and summons, to the superior court for the
111 judicial district in which the action may be brought, or to any judge of
112 the court, that a hearing be held to determine whether the lien for which

113 the bond was substituted should be declared invalid or reduced in
114 amount. The court or judge shall thereupon order reasonable notice of
115 the application to be given to the obligee on the bond and, if the
116 application is not made by all principals or sureties on the bond, shall
117 order reasonable notice of the application to be given to all other such
118 principals and sureties, and shall set a date for the hearing to be held
119 thereon. If the obligee or any principal or surety entitled to notice is not
120 a resident of this state, the notice shall be given by personal service,
121 registered or certified mail, publication or such other method as the
122 court or judge shall direct. At least four [days] days' notice shall be given
123 to the obligee, principal and surety entitled to notice prior to the date of
124 the hearing.

125 (2) The application, order and summons shall be substantially in the
126 form established by subsection (b) of section 49-35a, adapted
127 accordingly. The provisions of subdivisions (1) and (2) of subsection (b)
128 of section 49-35a, shall apply.

129 (3) If an action on the bond is pending before any court, any party to
130 that action may at any time prior to trial, unless an application under
131 subdivision (1) of this subsection has previously been ruled upon, move
132 that the lien for which the bond was substituted be declared invalid or
133 reduced in amount.

134 (4) No more than one application or motion under subdivision (1) or
135 (3) of this subsection may be ruled upon with respect to any single
136 mechanic's lien, except that the foregoing does not preclude an
137 application or motion by a person not given notice of the prior
138 application or not a party to the action at the time the prior motion was
139 ruled upon. Nothing in this subdivision shall be construed as permitting
140 a surety on a bond to bring an application for discharge or reduction, if
141 the validity of the lien has previously been ruled upon pursuant to
142 section 49-35a.

143 (5) Upon the hearing held on the application or motion set forth in
144 this subsection, the obligee on the bond shall first be required to

145 establish that there is probable cause to sustain the validity of the lien.
146 Any person entitled to notice under subdivision (1) of this section may
147 appear, be heard and prove by clear and convincing evidence that the
148 validity of the lien should not be sustained or that the amount of the lien
149 claimed is excessive and should be reduced. Upon consideration of the
150 facts before it, the court or judge may: (A) Deny the application or
151 motion if probable cause to sustain the validity of the lien is established;
152 or (B) order that the bond is void if (i) probable cause to sustain the
153 validity of the lien is not established, or (ii) by clear and convincing
154 evidence, the invalidity of the lien is established; or (C) order the
155 amount of the bond reduced if the amount of the lien is found to be
156 excessive by clear and convincing evidence.

157 (6) Any order entered upon an application set forth in subdivision (1)
158 of this subsection shall be deemed a final judgment for the purpose of
159 appeal.

160 (7) The costs and fees described in section 52-249 shall be recoverable
161 by a plaintiff as part of a judgment in any action upon a bond which has
162 been substituted for a mechanic's lien under this section.

163 (c) The bond described in subsection (a) of this section shall be
164 substantially in the following form:

165 "KNOW ALL MEN BY THESE PRESENTS:

166 THAT (hereinafter referred to as "Principal"), and
167 (hereinafter referred to as "Surety"), are holden and firmly bound jointly
168 and severally unto , in the penal sum of \$, lawful money of the
169 United States of America, to which payment well and truly to be made,
170 we hereby bind ourselves, our heirs, executors, administrators,
171 successors and assigns firmly by these presents:

172 The condition of this obligation is such that (hereinafter
173 referred to as "Lienor") has filed a mechanic's lien on real property
174 owned by (hereinafter referred to as "Owner") in connection with
175 certain labor, materials, and services Lienor provided for the

176 improvement of Owner's property which is situated in, Connecticut,
177 known as, and more particularly described in said lien, which lien
178 is to secure the sum of \$ Plus interest, attorneys' fees and costs, is
179 dated, and recorded on in the land records of in Volume
180 at Page (hereinafter referred to as "Lien"). A copy of the Lien is
181 attached hereto as Exhibit A.

182 WHEREAS, this Bond is in substitution for the Lien.

183 WHEREAS, Principal and Surety, with the consent of Lienor,
184 desire to substitute their liability and obligations under this Bond as
185 security for the claim secured by the Lien, plus pre- and post-judgment
186 interest, attorneys' fees and costs incurred by and/or awarded to Lienor.

187 NOW THEREFORE, pursuant to section 49-37 of the Connecticut
188 General Statutes, the condition of this obligation is such that if Principal
189 shall pay or cause to be paid to Lienor or its assigns all amounts which
190 a court of competent jurisdiction may adjudge to have been secured by
191 said Lien, with pre- and post-judgment interest, attorneys' fees and
192 costs, or in default of such payment shall pay or cause to be paid to the
193 officer having the execution issued on such judgment, on demand, the
194 actual value at the date hereof of such personal property, not exempt
195 from said Lien, not exceeding the sum of, then this Bond shall be
196 void, but otherwise to remain in full force and effect."

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2020	49-8
Sec. 2	October 1, 2020	New section
Sec. 3	October 1, 2020	New section
Sec. 4	October 1, 2020	49-37

Statement of Purpose:

To: (1) Require a mortgagee to deliver the mortgage release to the town clerk and a certified copy of such release to the mortgagor; (2) require a mortgagee to accept a payment for mortgage releases from an attorney's IOLTA account; (3) require the acceptance of certain payments on

mortgage loans issued by Connecticut banks and Connecticut credit unions on and after October 1, 2020; and (4) allow property owners to substitute bonds for mechanic's liens without seeking judicial intervention.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]