



# House of Representatives

General Assembly

**File No. 70**

January Session, 2021

Substitute House Bill No. 6369

*House of Representatives, March 17, 2021*

The Committee on Banking reported through REP. DOUCETTE of the 13th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **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. Subsection (a) of section 49-8 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective October*  
3 *1, 2021*):

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

15 person authorized by law to release the mortgage shall deliver a copy of  
16 such release to the mortgagor.

17 Sec. 2. (NEW) (*Effective October 1, 2021*) A mortgagee shall accept as  
18 payment tendered for satisfaction or partial satisfaction of a mortgage a  
19 bank check, certified check, attorney's clients' funds account check, title  
20 insurance company check, wire transfer or any other form of payment  
21 authorized under federal law.

22 Sec. 3. Section 49-37 of the general statutes is repealed and the  
23 following is substituted in lieu thereof (*Effective October 1, 2021*):

24 (a) Whenever any mechanic's lien has been placed upon any real  
25 estate pursuant to sections 49-33, 49-34 and 49-35, the owner of [that]  
26 such real estate, or any person interested in it, may [make an application  
27 to any judge of the Superior Court that the lien be dissolved] dissolve  
28 such lien upon the substitution of a bond, [with surety, and the judge  
29 shall order reasonable notice to be given to the lienor of the application.  
30 If the lienor is not a resident of the state, the judge may order notice to  
31 be given by publication, registered or certified letter or personal service.  
32 If the judge is satisfied that the applicant in good faith intends to contest  
33 the lien, he shall, if the applicant offers a bond, with sufficient surety,  
34 conditioned to pay to the lienor or his assigns such amount as a court of  
35 competent jurisdiction may adjudge to have been secured by the lien,  
36 with interest and costs, order the lien to be dissolved and such bond  
37 substituted for the lien and shall return the application, notice, order  
38 and bond to the clerk of the superior court for the judicial district  
39 wherein the lien is recorded; and, if the applicant, within ten days from  
40 such return, causes a copy of the order, certified by the clerk, to be  
41 recorded in the town clerk's office where the lien is recorded, the lien  
42 shall be dissolved.] Such lien shall be dissolved by the owner of such  
43 real estate, or any person interested in it, by lodging with the town clerk  
44 of the town in which such real estate is situated, a bond, with sufficient  
45 surety, conditioned to pay to the lienor or his assigns such amount  
46 secured by such lien, plus interest, costs and attorney's fees. The town  
47 clerk shall record the bond with deeds of land. The bond shall state that

48 it is a bond in substitution of a mechanic's lien pursuant to this section  
49 and describe the premises, the amount of the lien thereon, the name or  
50 names of the person against whom such lien was filed and the penal  
51 sum of the bond being substituted for such lien. A bond with a penal  
52 sum that is one hundred twenty-five per cent of the amount of the lien  
53 for which it is being substituted shall be deemed sufficient surety for the  
54 purposes of dissolving such lien, except such amount shall not be a limit  
55 on the lienor's potential recovery in any action brought by the lienor on  
56 the bond or to recover upon the claim. The owner of such real estate  
57 shall serve a true and attested copy of the record of the bond upon the  
58 lienor in the same manner as is provided for the service of the notice in  
59 section 49-35. Whenever a bond is substituted for any lien after an action  
60 for the foreclosure of a lien has been commenced, the plaintiff in the  
61 foreclosure may amend his complaint, without costs, so as to make the  
62 action one upon the bond with which the plaintiff [may] shall join an  
63 action to recover upon his claim. Whenever a bond is substituted for any  
64 lien before an action for the foreclosure of the lien has been commenced,  
65 the plaintiff may join the action upon the bond with an action to recover  
66 upon his claim. Whenever a bond has been substituted for any lien,  
67 pursuant to this section, unless an action is brought to recover upon the  
68 bond within one year from the date of recording the certificate of lien,  
69 the bond shall be void.

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

72 (1) The principal or surety on the bond, if no action to recover on the  
73 bond is then pending before any court, may make application, together  
74 with a proposed order and summons, to the superior court for the  
75 judicial district in which the action may be brought, or to any judge of  
76 the court, that a hearing be held to determine whether the lien for which  
77 the bond was substituted should be declared invalid or reduced in  
78 amount. The court or judge shall thereupon order reasonable notice of  
79 the application to be given to the obligee on the bond and, if the  
80 application is not made by all principals or sureties on the bond, shall  
81 order reasonable notice of the application to be given to all other such

82 principals and sureties, and shall set a date for the hearing to be held  
83 thereon. If the obligee or any principal or surety entitled to notice is not  
84 a resident of this state, the notice shall be given by personal service,  
85 registered or certified mail, publication or such other method as the  
86 court or judge shall direct. At least four [days] days' notice shall be given  
87 to the obligee, principal and surety entitled to notice prior to the date of  
88 the hearing.

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

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

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

107 (5) Upon the hearing held on the application or motion set forth in  
108 this subsection, the obligee on the bond shall first be required to  
109 establish that there is probable cause to sustain the validity of the lien.  
110 Any person entitled to notice under subdivision (1) of this section may  
111 appear, be heard and prove by clear and convincing evidence that the  
112 validity of the lien should not be sustained or that the amount of the lien  
113 claimed is excessive and should be reduced. Upon consideration of the  
114 facts before it, the court or judge may: (A) Deny the application or

115 motion if probable cause to sustain the validity of the lien is established;  
116 or (B) order that the bond is void if (i) probable cause to sustain the  
117 validity of the lien is not established, or (ii) by clear and convincing  
118 evidence, the invalidity of the lien is established; or (C) order the  
119 amount of the bond reduced if the amount of the lien is found to be  
120 excessive by clear and convincing evidence.

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

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

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

129 "KNOW ALL MEN BY THESE PRESENTS:

130 THAT .... (hereinafter referred to as "Principal"), and ....  
131 (hereinafter referred to as "Surety"), are holden and firmly bound jointly  
132 and severally unto .... , in the penal sum of \$ .... , lawful money of the  
133 United States of America, to which payment well and truly to be made,  
134 we hereby bind ourselves, our heirs, executors, administrators,  
135 successors and assigns firmly by these presents:

136 The condition of this obligation is such that .... (hereinafter  
137 referred to as "Lienor") has filed a mechanic's lien on real property  
138 owned by .... (hereinafter referred to as "Owner") in connection with  
139 certain labor, materials, and services Lienor provided for the  
140 improvement of Owner's property which is situated in .... , Connecticut,  
141 known as .... , and more particularly described in said lien, which lien  
142 is to secure the sum of \$ .... Plus interest, attorneys' fees and costs, is  
143 dated .... , and recorded on .... in the land records of .... in Volume ....  
144 at Page .... (hereinafter referred to as "Lien"). A copy of the Lien is  
145 attached hereto as Exhibit A.

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

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

151           NOW THEREFORE, pursuant to section 49-37 of the Connecticut  
152 General Statutes, the condition of this obligation is such that if Principal  
153 shall pay or cause to be paid to Lienor or its assigns all amounts which  
154 a court of competent jurisdiction may adjudge to have been secured by  
155 said Lien, with pre- and post-judgment interest, attorneys' fees and  
156 costs, or in default of such payment shall pay or cause to be paid to the  
157 officer having the execution issued on such judgment, on demand, the  
158 actual value at the date hereof of such personal property, not exempt  
159 from said Lien, not exceeding the sum of ... , then this Bond shall be  
160 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, 2021	49-8(a)
Sec. 2	October 1, 2021	New section
Sec. 3	October 1, 2021	49-37

**BA**           *Joint Favorable Subst.*

---

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

---

**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill makes changes to mortgage releases and mechanics liens and does not result in a fiscal impact to the state or municipalities.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

**OLR Bill Analysis****sHB 6369*****AN ACT CONCERNING ISSUES RELATING TO MORTGAGES AND MECHANIC'S LIENS.*****SUMMARY**

This bill allows the owner of real estate subject to a mechanic's lien, or any other individual with interest in the property, to substitute the lien with a bond without first applying to the court as required by current law.

The bill also requires a mortgagee (lender), or any person authorized to release a mortgage, to send a notice of the release when a mortgage is paid-off or in certain other instances to the town clerk of the town where the mortgaged property is located. Specifically, the notice must be sent when:

1. the mortgage is paid off;
2. a bona fide offer exists to pay off the mortgage or part of the mortgage, in accordance with its terms upon a release; or
3. the interested parties have a written agreement to partially release the mortgage.

Additionally, the mortgagee or authorized person must send a copy of the release to the mortgagor (borrower) (§ 1).

The bill also requires a mortgagee to accept, as payment or partial payment to satisfy a mortgage, a bank or certified check; attorney's clients' funds check; title insurance company check; wire transfer; or any other payment authorized by federal law (§ 2).

EFFECTIVE DATE: October 1, 2021

**§ 3 — SUBSTITUTING A MECHANIC’S LIEN**

Under the bill, a mechanic’s lien is dissolved when the owner or interested party lodges the bond with the town clerk where the property is located. The bond must (1) substantially conform to language the bill prescribes and (2) be for sufficient surety, including interest, costs, and attorney’s fees, which the bill sets at 125% of the lien amount. However, this amount does not limit the lienor’s potential recovery in any action to recover against the bond.

Under current law, a plaintiff in an action to foreclose against a lien may amend his or her complaint to make the action upon a substituted bond instead; the bill now requires the plaintiff to do so in order to recover on the claim.

The bill also (1) requires the real estate owner to serve a record of the bond with the lienor according to existing service of process laws and (2) allows a plaintiff to recover costs and fees in a judgement against the bond equivalent to what existing law allows in a judgement against a lien.

**COMMITTEE ACTION**

Banking Committee

Joint Favorable Substitute

Yea 18 Nay 0 (02/23/2021)