

**Proposed Substitute
Bill No. 6369**

January Session, 2021

LCO No. 3881

**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2 repealed and the following is substituted in lieu thereof (*Effective October*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 Section 49-37 of the general statutes is repealed and the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	<i>October 1, 2021</i>	49-8(a)
Sec. 2	<i>October 1, 2021</i>	New section
Sec. 3	<i>October 1, 2021</i>	49-37