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The mechanic's lien discharge bond: What it is, and what it does

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The primary reason for obtaining a mechanic's lien discharge bond is to remove the lien, and its accompanying headache, from the property. The key thing to remember is that bonding a mechanic's lien does not get rid of the lien. The name of the bond—a mechanic's lien discharge bond—causes a lot of confusion to those unfamiliar with the intricacies of the Lien Law. The discharge bond does not extinguish the mechanic's lien; it discharges the lien in the sense of removing it from the property. The lien itself remains alive and well.

A bond to discharge a mechanic's lien serves one simple and particular purpose: it removes the mechanic's lien from a parcel of real property and, in essence, the mechanic's lien then attaches to the bond until it is vacated, satisfied or expired. Pursuant to Lien Law § 19(4), a mechanic's lien may be discharged by posting a bond equal to 110% of the face value of the lien. This answers one of the most common questions in the bond process: how much does it cost to bond a mechanic's lien? The answer is that it always depends on the amount of the lien, but always will require at least 110% of the face value of the lien. It does not matter what surety issues the bond; they all must issue a bond for 110% of the face value of the lien. The only area where the bonding cost can vary is in the premium that the surety charges the principal for the bond. The premium is based upon several factors, including the amount of the lien.

While just about any insurance company licensed and authorized to conduct business in New York can issue a mechanic's lien discharge bond, there are certain sureties that specialize in this area and, therefore, are more familiar with the process. Most bonds can be paid for in one of two ways: cash or a letter of credit. Obviously posting cash moves the process along more quickly. This is because there is little risk to the surety as they are literally collecting the entire amount first and then holding it until the mechanic's lien is discharged. On the other hand, securing the bond with a letter of credit usually extends the process and the surety may be very selective in banks from which it will accept a letter of credit. Something to keep in mind is that the surety will require the principal to defend and indemnify it in any action that is brought to enforce the lien.

After the bond is issued it is served upon the lienor and filed with the county clerk where the mechanic's lien was recorded. Some counties, including New York, will require the purchase of an index number and submission of an attorney affirmation requesting the discharge of the mechanic's lien. Once recorded, the bond now takes the place of the property and the mechanic's lien is no longer an encumbrance on the title.

The mechanic's lien, having been removed from the property, is now attached to the discharge bond. Despite the bond, the lien will expire by operation of law in the same manner as it would expire against the property. Upon expiration, some sureties will require a court order explicitly

cancelling and vacating the mechanic's lien before they release the bond collateral back to the principal. Other sureties will discharge the bond upon receipt of a letter from the attorney for the bond's principal stating that the time to foreclose upon the lien has expired and that no lien foreclosure action has been commenced.

A mechanic's lien that has been bonded can be foreclosed upon in generally the same manner as a lien that has not been bonded. Notably, if a mechanic's lien has been bonded the owner is no longer a necessary party (Lien Law Â§44-b). But the surety that issued the bond is now usually named as a party, as is the principal under the bond. One important distinction is that no lis pendens is filed in connection with a foreclosure action upon a lien that has been bonded. Other than these differences, an action to foreclose upon a mechanic's lien that has been bonded will generally follow the same course as a lien that was not bonded. Most importantly, the lienor must still establish that its mechanic's lien was valid before recovery can be achieved and the owner has not waived any defenses by bonding the lien.

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