

STATEMENT FROM STUART S. ZISHOLTZ

In addition to the services we perform for lienors, we also get multiple calls from general contractors, subcontractors, owners, etc., disputing claims and requesting guidance as to how to remove a mechanic's lien filed by someone else.

There are multiple ways in which a mechanic's lien could be discharged or vacated. A mechanic's lien is valid for one year and will expire as of right if not renewed. This option requires the owner, general contractor, etc. to wait an entire year to see whether the lienor commences a foreclosure action or renews the mechanic's lien.

Another method requires the owner or general contractor to serve a Notice to Foreclose on the lienor forcing the lienor to commence a foreclosure proceeding or suffer the harsh remedy of having his lien removed. If he commences a foreclosure action, the lienor will mostly likely file a Notice of Pendency which will extend the lien for three years. If he does not commence a foreclosure action, an application may be filed with the Court by the owner or general contractor seeking to vacate the mechanic's lien.

Another option available to the owner or general contractor is to bond the mechanic's lien. In this scenario, the bond replaces the real property as the asset. When bonding the mechanic's lien, collateral must be posted and the bond is issued in an amount of 110 percent of the lien. The lienor still must commence a timely foreclosure lawsuit but instead of seeking to sell the real property at public auction, the lienor is demanding payment from the surety company on the bond.

In a recent decision, a general contractor sought to bond a mechanic's lien filed by a subcontractor by utilizing a surety company unauthorized to do business within the State of New York. Initially, the Clerk of the Court discharged the lien when the bond was filed.

However, the Appellate Division found that the County Clerk erroneously discharged the lien based upon a false certification by the surety that it was authorized to do business in New York. Since the procedures of the Lien Law must be strictly followed, the discharge of the lien without a Court Order violated the provisions of the Lien Law and the Court was empowered to reinstate the mechanic's lien.

It is imperative, therefore, that if you are seeking a surety bond to discharge the mechanic's lien that you utilize a surety that is licensed to do business within the State of New York. Otherwise, your ability to do so may be futile.

Remember, never let your lien time run out

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims, kindly contact me.

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