

**SENATE FLOOR VERSION**

February 26, 2019

SENATE BILL NO. 449

By: Dugger of the Senate

and

West (Kevin) of the House

An Act relating to liens; amending 42 O.S. 2011, Section 147.1, which relates to mechanics and materialmen's liens; modifying date by which cash deposit and accrued interest shall be forfeited to the county general fund; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 42 O.S. 2011, Section 147.1, is amended to read as follows:

Section 147.1. Any property owner or other interested party, including but not limited to mortgagees, contractors, subcontractors and others against whom a lien claim is filed under the provisions of the law relating to mechanics' and materialmen's liens, may at any time discharge the lien by depositing with the county clerk in whose office the lien claim has been filed either: An amount of money equal to one hundred twenty-five percent (125%) of the lien claim amount; or a corporate surety bond with a penal amount equal to one hundred twenty-five percent (125%) of the lien claim amount.

1 Within three (3) business days after the deposit of money or bond is  
2 made, the county clerk shall serve upon the lien claimant, at the  
3 address shown on the lien claim, written notice setting forth: The  
4 number of the lien claim; the name of the lien claimant; the name of  
5 the property owner; the name of the alleged debtor, if someone other  
6 than the property owner; the property description shown on the lien  
7 claim; and the amount of cash deposited or, if a bond is filed, the  
8 names of the principal and surety and the bond penalty. The party  
9 seeking to discharge the lien shall prepare and deliver the notice  
10 to the county clerk and pay a fee in accordance with Section 32 of  
11 Title 28 of the Oklahoma Statutes. An abbreviated notice may be  
12 used if the same refers to and encloses a copy of the lien claim and  
13 either a copy of the cash receipt issued by the county clerk or a  
14 copy of the bond with the clerk's filing stamp thereon. The notice  
15 shall be mailed by registered or certified mail at the option of the  
16 county clerk.

17 If cash is deposited, the county clerk shall immediately show  
18 the lien released of record. If a bond is deposited, the lien  
19 claimant shall have ten (10) days after the notice is mailed within  
20 which to file a written objection with the county clerk. If a  
21 written objection is not timely filed the county clerk shall  
22 immediately show the lien released of record. If an objection is  
23 timely made, the county clerk shall set a hearing within ten (10)  
24 days thereafter and notify by ordinary mail both the lien claimant

1 and the party making the deposit of the date and time thereof. The  
2 only grounds for objection shall be that: The surety is not  
3 authorized to transact business in this state; the bond is not  
4 properly signed; the penal amount is less than one hundred twenty-  
5 five percent (125%) of the claim; the power of attorney of the  
6 surety's attorney-in-fact does not authorize the execution; there is  
7 no power of attorney attached if the bond is executed by anyone  
8 other than the surety's president and attested by its secretary; or  
9 a cease and desist order has been issued against the surety either  
10 by the Insurance Commissioner or a court of competent jurisdiction.  
11 Within two (2) business days following the hearing the county clerk  
12 shall either sustain or overrule the objections and notify the  
13 parties of the county clerk's ruling by ordinary mail. If the  
14 objections are sustained, the ruling of the county clerk shall be  
15 conclusive for lien release purposes unless appealed within ten (10)  
16 days to the district court. If the objections are overruled, the  
17 county clerk shall immediately show the lien released of record.

18 The bond shall: Name the lien claimant as obligee and the party  
19 seeking the release as principal; be executed by both the principal  
20 and the surety; have a proper power of attorney attached if executed  
21 by an attorney-in-fact; be executed by a corporate surety authorized  
22 to transact business in this state; and be conditioned that the  
23 principal and surety will pay the full amount of the claim as  
24 established in any appropriate court proceeding, plus any court

1 costs and attorney fees awarded the lien claimant, but in no event  
2 shall the liability of the principal or surety under the bond exceed  
3 the bond penalty. The preceding clause shall not limit the common  
4 law liability of the party who created the indebtedness upon which  
5 the lien claim is based. The conditions of any bond filed pursuant  
6 to this section shall be deemed to comply with the requirements  
7 hereof, regardless of the language or limitations set forth therein,  
8 if both the principal and surety intend that the bond be filed to  
9 secure a lien release under this section.

10 The cash deposit or bond, as the case may be, shall stand in  
11 lieu of the released lien, and the lien claimant must proceed  
12 against the substituted security in the same time and manner as is  
13 required for foreclosure of a lien claim. The cash deposit or bond  
14 shall stand liable for such principal, interest, court costs and  
15 attorney fees to the extent they could be awarded in a lien  
16 foreclosure proceeding.

17 The only proper parties to an action against the substituted  
18 security are: The party making the cash deposit; the bond principal  
19 and surety; the party primarily liable for the indebtedness giving  
20 rise to the lien claim; and anyone else who may be liable to the  
21 lien claimant for the same indebtedness. The party making the cash  
22 deposit and the bond principal and surety are necessary parties to  
23 an action against the substituted security, and by making a deposit  
24 or filing a bond the parties subject themselves to personal

1 jurisdiction in the court where the action is properly filed and may  
2 be served with process as in other cases.

3 If the lien claimant fails to timely file a foreclosure action,  
4 upon application of the party making the deposit or filing the bond  
5 and the payment of a fee of Ten Dollars (\$10.00), the county clerk  
6 shall return the cash to the party making the deposit or  
7 appropriately note on the bond that the same has been released. The  
8 clerk shall not incur liability to any lien claimant for an  
9 inadvertent release of cash or bond. At the end of ~~ten (10)~~ three  
10 (3) years and after the county clerk has attempted written  
11 notification to the lien claimant at the address shown on the lien  
12 claim, if no foreclosure has been commenced by the lien claimant or  
13 such money has not been withdrawn upon application of the depositing  
14 party, the cash deposit plus all accrued interest shall be forfeited  
15 to the county general fund.

16 Nothing contained in this section shall preclude the lien  
17 claimant and other interested parties from entering into agreements  
18 for the substitution of a different form of security in lieu of the  
19 lien claim.

20 The county clerk shall invest the deposited cash in the manner  
21 provided for county treasurers in Section 348.1 of Title 62 of the  
22 Oklahoma Statutes. Any interest earned thereon shall become a part  
23 of the deposit and be either returned to the party making the  
24 deposit, if no action is filed, or paid in accordance with any final

1 judgment rendered by the court in the action against the substituted  
2 security. If a district court judgment adverse to the depositing  
3 party is entered, in setting the amount of supersedeas bond the  
4 court shall take into consideration the existing cash deposit or  
5 bond.

6 SECTION 2. This act shall become effective November 1, 2019.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
8 February 26, 2019 - DO PASS  
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