

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 449

By: Dugger

6 AS INTRODUCED

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

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

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

15 Section 147.1. Any property owner or other interested party,
16 including but not limited to mortgagees, contractors, subcontractors
17 and others against whom a lien claim is filed under the provisions
18 of the law relating to mechanics' and materialmen's liens, may at
19 any time discharge the lien by depositing with the county clerk in
20 whose office the lien claim has been filed either: An amount of
21 money equal to one hundred twenty-five percent (125%) of the lien
22 claim amount; or a corporate surety bond with a penal amount equal
23 to one hundred twenty-five percent (125%) of the lien claim amount.
24 Within three (3) business days after the deposit of money or bond is

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

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

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

17 The bond shall: Name the lien claimant as obligee and the party
18 seeking the release as principal; be executed by both the principal
19 and the surety; have a proper power of attorney attached if executed
20 by an attorney-in-fact; be executed by a corporate surety authorized
21 to transact business in this state; and be conditioned that the
22 principal and surety will pay the full amount of the claim as
23 established in any appropriate court proceeding, plus any court
24 costs and attorney fees awarded the lien claimant, but in no event

1 shall the liability of the principal or surety under the bond exceed
2 the bond penalty. The preceding clause shall not limit the common
3 law liability of the party who created the indebtedness upon which
4 the lien claim is based. The conditions of any bond filed pursuant
5 to this section shall be deemed to comply with the requirements
6 hereof, regardless of the language or limitations set forth therein,
7 if both the principal and surety intend that the bond be filed to
8 secure a lien release under this section.

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

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

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