



**2019 Edition**

# Mechanics’ Liens in Connecticut

A Guide to Resources in the Law Library

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# Introduction

A Guide to Resources in the Law Library

- **"In Connecticut, a mechanic's lien is a creature of statute and establishes a right of action where none existed at common law."** [Dreambuilders Construction, Inc. v. Diamond](#), 121 Conn. App. 554, 558, 997 A.2d 553 (2010).
- **"Our Supreme Court has noted that 'the important purpose of mechanic's lien statutes [is] to provide an inexpensive and simple method for material suppliers and contractors to secure the value of the services or materials that they have added to the property [which is subject to the mechanic's lien].'"** [Red Rooster Construction Co. v. River Associates, Inc.](#), 224 Conn. 563, 573, 620 A.2d 118 (1993). [Astoria Federal Mortgage Corp. v. Genesis Ltd. Partnership](#), 167 Conn. App. 183, 199, 143 A.3d 1121 (2016).
- **"Materialman's and mechanic's lien statutes award an interest in real property to workers who have contributed their labor, and to suppliers who have furnished material, for the improvement of real property. Since neither the labor nor the material can be reclaimed once it has become a part of the realty, this is the only method by which workmen or small businessmen who have contributed to the improvement of property may be given a remedy against a property owner who has defaulted on his promise to pay for the labor and the materials."** [Connecticut v. Doehr](#), 501 U.S. 1, 28, 111 S.Ct. 2105, 115 L.ed.2d 1 (1991).
- **"A mechanic's lien, unlike a mortgage, is 'not an agreement or contract between parties but rather a lien upon real estate which the plaintiff seeks to take by force of law and eventually to foreclose.'" City Iron Works, Inc. v. Frank Badstuebner Post No. 2090**, 22 Conn.Sup. 230, 231, 167 A.2d 462 (1960). [First Constitution Bank v. Harbor Village Ltd. Partnership](#), 230 Conn. 807, 821, 646 A.2d 812 (1994)
- **"A 'mechanic' is normally envisioned as a skilled worker who brings about a result by the use of tools, machines or equipment."** [Nickel Mine Brook Assoc. v. Joseph E. Sakal, P.C.](#), 217 Conn. 361, 368, 585 A.2d 1210 (1991).
- **"...under well established precedent, [t]he purpose of the [mechanic's lien] statute is to give a contractor security for labor and material.... If the materials are not furnished, and the work is not done, in the construction, raising, removal or repairs of a building, there can be no lien." (Citations omitted.) Stone v. Rosenfield**, 141 Conn. 188, 191-92, 104 A.2d 545 (1954). [FCM Group, Inc. v. Miller](#), 300 Conn. 774, 806, 17 A.3d 40 (2011). (Internal quotation marks omitted.)
- **"Any mechanic's lien may be foreclosed in the same manner as a mortgage."** Conn. Gen. Stat. [§ 49-33](#)(i) (2019).
- **"... because a mechanic's lien foreclosure action is an equitable proceeding; Russo Roofing, Inc. v. Rottman**, 86 Conn.App. 767, 776, 863 A.2d 713 (2005); a court, in its equitable powers, must look to substance over form, may consider equitable principles even though they may not have been specifically pleaded, and 'may consider all relevant circumstances to ensure that complete justice is done.'" [McKeever v. Fiore](#), 78 Conn.App. 783, 788, 829 A.2d 846 (2003). [Astoria Federal Mortgage Corp. v. Genesis Ltd. Partnership](#), 167 Conn. App. 183, 199, 143 A.3d 1121 (2016).

# Section 1: Basic Requirements for Mechanic's Liens in Connecticut

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to the basic requirements for filing a mechanic's lien in Connecticut.

## **DEFINITIONS:**

- "A mechanic's lien is a creature of statute and gives a right of action which did not exist at common law." [Diamond National Corporation v. Dwelle](#), 164 Conn. 540, 543, 325 A.2d 259 (1973).
- **Who May File:** "If any person has a claim for more than ten dollars for materials furnished or services rendered in the construction, raising, removal or repairs of any building or any of its appurtenances or in the improvement of any lot or in the site development or subdivision of any plot of land . . . ." Conn. Gen. Stat. [§ 49-33](#)(a) (2019).
- "The word '**material**' as used in sections 49-33 to 49-43, inclusive, shall include construction equipment and machinery that is rented or leased for use (1) in the prosecution of work provided for in the contract within the meaning of sections 49-33 to 49-43, inclusive, or (2) in the construction, raising or removal of any building or improvement of any lot or in the site development or subdivision of any plot of land within the meaning of sections 49-33 to 49-39, inclusive." Conn. Gen. Stat. [§ 49-42](#)(c) (2019). (Emphasis added.)
- **Required:** "the claim is by virtue of an *agreement with or by consent of the owner* of the land upon which the building is being erected or has been erected or has been moved, or by consent of the owner of the lot being improved or by consent of the owner of the plot of land being improved or subdivided, *or of some person having authority from or rightfully acting for the owner* in procuring the labor or materials, the building, with the land on which it stands or the lot or in the event that the materials were furnished or services were rendered in the site development or subdivision of any plot of land, then the plot of land, is subject to the payment of the claim." Conn. Gen. Stat. [§ 49-33](#)(a) (2019). (Emphasis added.)
- **Claim:** "is a *lien on the land, building and appurtenances* or lot or in the event that the materials were furnished or services were rendered in the site development or subdivision of any plot of land, then on the *plot of land* . . . ." Conn. Gen. Stat. [§ 49-33](#)(b) (2019). (Emphasis added.)
- **Where to File:** "A mechanic's lien is not valid unless the person performing the services or furnishing the materials . . . lodges with the town clerk of the town in which the building, lot or plot of land is situated a certificate in writing, which shall be recorded by the town clerk with deeds of land ... and ... serves a true and attested

copy of the certificate upon the owner ... in the same manner as is provided for service of the notice in section 49-35" Conn. Gen. Stat. [§ 49-34](#) (2019).

- **Precedence:** "the claim takes precedence over any other encumbrance originating after the commencement of the services, or the furnishing of any such materials, subject to apportionment as provided in section 49-36." Conn. Gen. Stat. [§ 49-33](#)(b) (2019).
- **Subcontractor:** "A mechanic's lien shall not attach to any such building or its appurtenances or to the land on which the same stands or to any lot or to any plot of land, in favor of any subcontractor to a greater extent in the whole than the amount which the owner has agreed to pay to any person through whom the subcontractor claims subject to the provisions of section 49-36." Conn. Gen. Stat. [§ 49-33](#)(e) (2019).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019).  
Chapter 847. Mortgages and liens  
[§ 49-33](#). Mechanic's lien. Precedence. Rights of subcontractors.  
[§ 49-34](#). Certificate of lien to be recorded and notice given to owner.

### **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Daniel Duffy, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Filing Mechanic's Lien*, OLR Report No. [2006-R-0063](#) (January 20, 2006).  
"You asked for the requirements for filing mechanic's liens in Connecticut, New York, and Rhode Island."
- Daniel Duffy, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Florida's Law on Mechanic's Liens*, OLR Report No. [2004-R-0912](#) (December 13, 2004).  
"You asked if Florida's construction lien law requires contractors to perfect a lien on each job."
- George Coppolo, Chief Attorney, Office of Legislative Research, Connecticut General Assembly, *Mechanic's Lien-Subcontractors*, OLR Report No. [98-R-0280](#) (October 2, 2003)  
"You asked for a summary of the mechanic's lien law."
- Helga Niesz, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Connecticut And California Mechanic's Lien Statutes*, OLR Report No. [97-R-0628](#) (May 2, 1997).  
"You asked for a comparison of Connecticut and California mechanic's lien statutes."

## **FORMS:**

- Diane W. Whitney ... [et al.] [Library of Connecticut Civil Complaints for Business Litigation](#), (2010).  
Volume I: Construction Litigation  
Form 4-010: Notice of intent to file **mechanic's lien**  
Form 4-011: **Certificate of mechanic's lien**
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#), (2015).  
Form 1-008: **Mechanic's Lien Certificate**
- 3A Joel Kaye and Wayne Effron, Connecticut Practice Series, [Civil Practice Forms](#), 4<sup>th</sup> ed. (2004).  
Form S-152: **Release of Mechanic's Lien**
- 1A Douglass B. Wright and John H. Yeomans, [Connecticut Legal Forms](#) (1983).  
Chapter 9. Liens  
§ 901.1 **Mechanic's liens**
- Forms Index, [Connecticut Lawyers' Deskbook](#), 2<sup>nd</sup> ed. (2000).  
Chapter XIII: **Mechanics' Liens**  
**Certificate of mechanic's lien**  
**Notice of intent to file a mechanic's lien**

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Astoria Federal Mortgage Corporation v. Genesis Limited Partnership et al.](#), 167 Conn. App. 183, 143 A.3d 1121 (2016). "We address the defendant's claim that the court erred in granting the plaintiff's motion to dismiss because it improperly concluded that the defendant lacked standing as a result of its failure to record, prior to filing its cross claim [to foreclose the mechanic's lien], the ...assignment of the mechanic's lien." (p. 191)

"Neither this court nor our Supreme Court, however, has determined whether principles of assignment and recordation override these fundamental standing requirements for a party to foreclose a mechanic's lien. In order to guide our inquiry in this regard, we seek guidance from certain provisions of the mechanic's lien statute, specifically, subsection (i) of § 49-33, as well as case law pertaining to the foreclosure of mortgages." (p. 200)

"...our Supreme Court noted that reliance on mortgage law to assess a particular aspect of the law governing mechanic's liens is appropriate, 'particularly when similar guiding policies are in play.' [First Constitution Bank v. Harbor Village Ltd. Partnership](#), 230 Conn. 807 at 820, 646 A.2d 812 (1994). In this vein, we think that the principle that the mortgage follows the note, or the debt, can be analogized to mechanic's liens for purposes of foreclosure standing. Specifically, on the basis of our reading of the plain language of §§ 47-10, 49-17, and 49-33(i), we conclude that the failure of an assignee of a mechanic's lien to record an otherwise valid assignment of the lien does not deprive the assignee of the lien of standing to commence a foreclosure action." (p. 203-204)

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Milone & Macbroom, Inc. v. Winchester Estates, LLC et al.](#), Superior Court, Judicial District of Litchfield, No. CV11-6004987-S (May 24, 2016) (62 Conn. L. Rptr. 382) (2016 WL 3202664). "Tissa [a defendant] argues that there are no genuine issues of material fact and it is entitled to [summary] judgment as a matter of law **because the plaintiff's alleged mechanic's lien is invalid because Highland Ridge was not the owner or holder of equitable interest in the property at the time that the plaintiff commenced work and the owner did not consent to the property being subject to a mechanic's lien.**"
- [Absolute Plumbing and Heating, LLC v. Edelman](#), 146 Conn. App. 383, 394, 77 A. 3d 889 (2013). "**Assuming without** deciding that the defendant is correct in his assertion that the underlying contract does not meet the requirements of [the act], we do not agree that this is a bar to the plaintiff's right to recover against him under the mechanic's lien statute. The defendant has provided no authority to support his proposition that when a general contractor's lien is unenforceable for a lack of compliance with the act, the **subcontractor's lien also is unenforceable.**"
- [Absolute Plumbing and Heating, LLC v. Edelman](#), 146 Conn. App. 383, 395-396, 77 A. 3d 889 (2013). "...**we have determined that** the court properly accepted the referee's finding of the modified contract price, it follows that, at the time the contract was terminated, there was unpaid contract debt of approximately \$100,000. Because the court properly determined that there was unpaid contract debt, a lienable fund exists from which the plaintiffs can satisfy their claims. While Schott is barred from collecting this debt due to its failure to comply with the act, the plaintiffs are not **similarly constrained.**"
- [E and M Custom Homes, LLC v. Negron](#), 140 Conn. App. 92, 106, 59 A. 3d 262 (2013). "**the evidence supports the court's finding** that the construction budget represented the value of materials furnished and services rendered under the mechanic's lien. The plaintiff completed the work under the first four stages of the budget and received payment for those stages. As noted previously, Thomas never alerted the lender that it would cost more than \$191,000 to construct the house, nor did he know how the extra money would be used in the construction. Accordingly, the court properly concluded that the value of the plaintiff's materials furnished and services rendered should be based on the **construction budget.**"
- [Ceci Bros., Inc. v. Five Twenty-One Corp.](#), 51 Conn. App. 773, 792, 724 A.2d 541 (1999). "**We conclude that the [landscaping] services** performed by the plaintiff, pursuant to the maintenance agreement, which was a status quo agreement, were not lienable under § 49-33."
- [Thompson And Peck, Inc. v. Division Drywall, Inc.](#), 241 Conn. 370, 371-372, 696 A.2d 326 (1997) "The sole issue in this appeal is

whether unpaid insurance premiums owed by a subcontractor are "materials" or "services" under the mechanic's lien statute, General Statutes § 49-33. We conclude that because such premiums have not enhanced the property in some physical manner, laid the groundwork for the physical enhancement of the property, or played an essential part in the scheme of physical improvement of the property, they are not lienable under § 49-33."

- [Nickel Mine Brook Assoc. v. Joseph E. Sakal, P.C.](#), 217 Conn. 361, 369, 585 A.2d 1210 (1991). "There is no reference in the legislative history to attorneys, nor is there any evidence that the legislature intended to expand the scope of the mechanic's lien statute to include any type of legal services."
- [Seaman v. Climate Control Corporation](#), 181 Conn. 592, 595-596, 436 A.2d 271 (1980). ". . . it is well to put into context the relationships between owners, contractors and subcontractors under our mechanic's lien law. Those who provide services or materials in connection with the construction of a building are entitled to claim a lien on the land that they have improved if they fall into one of two categories. Lienors are protected if they have a claim either (1) by virtue of an agreement with or the consent of the owner of the land, or (2) by the consent of some person having authority from or rightfully acting for such owner in procuring labor or materials. General Statutes § 49-33."
- [Battistelli v. Jacobson](#), 13 Conn. Sup. 196, 199, (1944 Conn. Super. LEXIS 100). "Because a landlord knows of, and consents to, repairs being made, on leased premises owned by him, under a contract with his lessee, he does not thereby forfeit any rights as lessor and owner of the leased premises, nor does he thereby consent to a pledge of his property for a default of the lessee, if he was not a party to the contract."
- [Peck v. Brush](#), 90 Conn. 651, 654, 98 A. 561 (1916). ". . . it is not necessary that the materials shall be furnished under an express contract, but it is enough if they are furnished with the consent of the owner of the land, so that there is an implied contract by him to pay for them."

**WEST KEY NUMBERS:**

- Mechanics' Lien
  - I. Nature, grounds, and subject matter in general, # 1-21
  - II. Right to lien, # 22-115(5)

**DIGESTS:**

- [ALR Digest](#): Mechanics' Lien

**INDICES:**

- [ALR](#): Mechanics' Lien

**ENCYCLOPEDIAS:**

- 53 [Am Jur 2d](#) *Mechanics' Liens* (2017)
  - §§ 1-29. Introduction
  - §§ 30-46. Property, estates, or interests subject to lien
  - §§ 47-177. Right to lien



- 56 [C.J.S. Mechanics' Lien](#) (2018).
  - §§ 1-14. In general
  - §§ 15-101. Right to lien
  - §§ 15-24. Nature of improvement
  - §§ 25-35. Services rendered and materials furnished, and amount of claim
  - §§ 36-77. Contract with, or consent of, owner
  - §§ 78-86. Persons entitled to lien
  - §§ 87-101. **Contractors'** workers and material suppliers; subcontractors
- Elaine Marie Tomko, *Landlord's Liability To Third Party For Repairs Authorized By Tenant*, 46 [ALR5th](#) 1 (1997).
- Kimberly C. Simmons, *Architect's Services As Within Mechanics' Lien Statute*, 31 [ALR5th](#) 664 (1995).
- Wanda Ellen Wakefield, *Vacation And Sick Pay And Other Fringe Benefits As Within Mechanic's Lien Statute*, 20 [ALR4th](#) 1268 (1983).
- Annotation, *Removal Or Demolition Of Building Or Other Structure As Basis For Mechanic's Lien*, 74 [ALR3d](#) 386 (1976).
- Maurice T. Brunner, *Enforceability Of Mechanic's Lien Attached To Leasehold Estate Against Landlord's Fee*, 74 [ALR3d](#) 330 (1976).
- J.R. Kemper, *Enforceability Of Single Mechanic's Lien Upon Several Parcels Against Less Than The Entire Property Liened*, 68 [ALR3d](#) 1300 (1976).
- Maurice T. Brunner, *Abandonment Of Construction Or Of Contract As Affecting Time For Filing Mechanic's Liens Or Time For Giving Notice To Owner*, 52 [ALR3d](#) 797 (1973).
- George L. Blum, *Subjection of Municipal Property, or Alleged Municipal Property, to Mechanics' Liens*, 81 [ALR6th](#) 363(2013).
- Maurice T. Brunner, *Labor In Examination, Repair, Or Servicing Of Fixtures, Machinery, Or Attachments In Building, As Supporting A Mechanics' Lien, Or As Extending Time For Filing Such A Lien*, 51 [ALR3d](#) 1087 (1973).
- R. Y. Liang, *Charge For Use Of Machinery, Tools, Or Appliances Used In Construction As Basis For Mechanic's Lien*, 3 [ALR3d](#) 573 (1965).
- Litigating Construction Liens, 53 [Am Jur Trials](#) 367 (2017).
  - §§ 30-46. Property subject to construction liens
  - §§ 59-86. Persons entitled to construction liens
- Christian R. Hoheb, ed., [A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut](#) (2011).
  - § 4.15 Mechanic's Liens

**TEXTS & TREATISES:**

- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).
  - Chapter 6. Mechanic's Liens
    - § 6: 1. General provisions
    - § 6: 2. Persons entitled to lien
    - § 6: 3. Property subject to mechanic's liens
    - § 6: 4. Items covered under mechanic's liens
    - § 6: 12. Effect of arbitration
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).
  - Chapter 15. Mechanic's Liens
    - § 15-1. Special concerns
- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).
  - Mechanics' Liens* by Alan Robert Baker, Gina M. Varano, and Anthony R. Minchella
    - Basic principles
      - What is a mechanic's lien (p. 388)
      - Who is entitled to file a mechanic's lien? (p. 389)
      - What type of property may be subject to a mechanic's lien (p. 389-390)

**LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- R. Bradley Morris, *Mechanic's Liens: To Lien or Not to Lien, That Is the Question*, 21 [Conn. Law.](#) 24 (2010).
- Laurence Levine, *Due Process Of Law In Pre-Judgment Attachment And The Filing Of Mechanics' Liens*, 50 [Conn. B.J.](#) 335 (1976).
- Charles M. Lyman, Note, *Mechanic's Lien—Priority Over Unrecorded Purchase-Money Mortgage—Gruss V. Miskinis*, 130 *Conn.* 367 (1943). 18 [Conn. B.J.](#) 28 (1944).

Table 1: Rights of Subcontractor – Mechanic’s Liens

<b>Rights of Subcontractor</b>	
Statutes	
<p>Conn. Gen. Stat. <a href="#">§ 49-33</a>(f) (2019)</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>You can visit your local law library or search the most recent <a href="#">statutes</a> and <a href="#">public acts</a> on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.</p> </div>	<p>“Any such subcontractor shall be subrogated to the rights of the person through whom the subcontractor claims, except <b>that the subcontractor shall have a mechanic’s lien or right to claim a mechanic’s lien in the event of any default by that person</b> subject to the provisions of sections 49-34, 49-35 and 49-36, provided the total of such lien or liens shall not attach to any building or its appurtenances, or to the land on which the same stands or to any lot or to any plot of land, to a greater amount in the whole than the amount by which the contract price between the owner and the person through whom the subcontractor claims exceeds the reasonable cost, either estimated or actual, as the case may be, of satisfactory completion of the contract plus any damages resulting from such default for which that person might be held liable to the owner and all bona fide payments, as defined in section 49-36, made by the owner before receiving notice of such lien or liens.”</p>
Cases	
<p><a href="#">Semac Electric Company, Inc. v. Skanska USA Building, Inc.</a>, Superior Court, Judicial District of Hartford, No. CV15-6076107-S (May 17, 2017) (2017 WL 2539015).</p>	<p>“Prior to filing this lawsuit, the subcontractor Semac placed a <b>mechanic’s lien on the land records against the Stamford hospital property</b>. The contractor Skanska says the lien is wildly inflated and cost it business with the hospital. After <b>filing suit, Semac wrote a letter to it’s own sub-contractors telling them it had filed suit, that it had filed a mechanic’s lien and so should they.</b>”</p>
<p><a href="#">W. G. Glenney Co. v. Bianco</a>, 27 Conn. App. 199, 201, 604 A.2d 1345 (1992).</p>	<p>“Under Connecticut law, a subcontractor's right to enforce a mechanic's lien against a property owner is based on the doctrine of subrogation . . . . The theory of subrogation allows the plaintiff to recover only to the extent the general contractor <b>could recover from the defendants.</b>”</p>
<p><a href="#">Seaman v. Climate Control Corporation</a>, 181 Conn. 592, 593, 436 A.2d 271 (1980).</p>	<p>The sole issue on this appeal is whether a second tier subcontractor has a right to a mechanic's lien against the owner's property when the owner owes money to the general contractor, but the first tier subcontractor has been fully paid by the general contractor.</p>

<p><u>Avery v. Smith</u>, 96 Conn. 223, 225, 113 A. 313 (1921).</p>	<p><b>"It is well settled that under our mechanic's lien law a subcontractor's right of lien depends upon the existence of such a right in the original contractor, whether perfected by him or not . . . ."</b></p>
<p><u>Waterbury Lumber &amp; Coal Co. v. Coogan</u>, 73 Conn. 519, 521, 48 A. 204 (1901).</p>	<p><b>"Statutory liens on real estate for improvements put upon them otherwise than by contract with the owner, are of two classes. These may be imposed in favor of a subcontractor because he is equitably entitled to a lien that would otherwise attach in favor of the contractor; or, under certain circumstances, they may be imposed on the ground that the improvements have so enhanced the value of the estate that it would be inequitable to allow the owner to be enriched at the expense of him by whom they were made."</b></p>
Legislative	
<p><a href="#">Office of Legislative Research</a> reports summarize and analyze the law in effect on the date of <b>each report's</b> publication. Current law may be different from what is discussed in the reports.</p>	<p>George Coppolo, Chief Attorney, Office of Legislative Research, Connecticut General Assembly, <b><i>Mechanic's lien—Subcontractors</i></b>, OLR Report No. <a href="#">98-R-0280</a> (October 2, 2003).</p>
Encyclopedias	
	<ul style="list-style-type: none"> <li>• James McLoughlin, <i>Right Of Subcontractor's Subcontractor Or Materialman, Or Of Materialman's Materialman, To Mechanic's Lien</i>, 24 <a href="#">ALR4th</a> 963 (1983).</li> <li>• Maurice T. Brunner, <i>Release Or Waiver Of Mechanic's Lien By General Contractor As Affecting Rights Of Subcontractor Or Materialman</i>, 75 <a href="#">ALR3d</a> 505 (1977).</li> <li>• J.R. Kemper, <i>Effect Of Bankruptcy Of Principal Contractor Upon Mechanic's Lien Of Subcontractor, Laborer Or Materialman As Against Owner Of Property</i>, 69 <a href="#">ALR3d</a> 1342 (1976).</li> <li>• J.R. Kemper, <i>Building And Construction Contracts: Right Of Subcontractor Who Has Dealt Only With Primary Contractor To Recover Against Property Owner In Quasi Contract</i>, 62 <a href="#">ALR3d</a> 288 (1975).</li> </ul>

Treatises

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).  
**Chapter 6. Mechanic's Liens**  
§ 6:2. Persons entitled to lien
- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).  
***Mechanics' Liens*** by Alan Robert Baker, Gina M. Varano, and Anthony R. Minchella  
Basic principles  
**Who is entitled to file a mechanic's lien?** (p. 389)  
**How is a mechanic's lien challenged?** (p. 393)  
1. Subrogation

## Section 2: Mechanic's Lien Certificate

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic resources relating to obtaining or perfecting a mechanic's lien in Connecticut.

**DEFINITIONS:**

- **Mechanic's Lien Certificate:** "A mechanic's lien is not valid unless the person performing the services or furnishing the materials (1) within ninety days after he has ceased to do so, lodges with the town clerk of the town in which the building, lot or plot of land is situated a certificate in writing, which shall be recorded by the town clerk with deeds of land, (A) describing the premises, the amount claimed as a lien thereon, the name or names of the person against whom the lien is being filed and the date of the commencement of the performance of services or furnishing of materials, (B) stating that the amount claimed is justly due, as nearly as the same can be ascertained, and (C) subscribed and sworn to by the claimant, and (2) not later than thirty days after lodging the certificate, serves a true and attested copy of the certificate upon the owner of the building, lot or plot of land in the same manner as is provided for the service of the notice in section 49-35." **Conn. Gen. Stat. § 49-34** (2019).

**STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2019).  
Chapter 847. Mortgages and liens  
[§ 49-33](#). Mechanic's lien. Precedence. Rights of subcontractors.  
[§ 49-34](#). Certificate of lien to be recorded and notice given to owner.

**LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Daniel Duffy, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Filing Mechanic's Lien*, OLR Report No. [2006-R-0063](#) (January 20, 2006).  
"You asked for the requirements for filing mechanic's liens in Connecticut, New York, and Rhode Island."
- Daniel Duffy, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Florida's Law on Mechanic's Liens*, OLR Report No. [2004-R-0912](#) (December 13, 2004).  
"You asked if Florida's construction lien law requires contractors to perfect a lien on each job."
- Helga Niesz, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Connecticut And California Mechanic's Lien Statutes*, OLR Report No. [97-R-0628](#) (May 2, 1997).  
"You asked for a comparison of Connecticut and California mechanic's lien statute."
- Diane W. Whitney ... [et al.] [Library of Connecticut Civil Complaints for Business Litigation](#), (2010).

**FORMS:**

Volume I: Construction Litigation

Form 4-010: Notice of intent to file a mechanic's lien

Form 4-011: Certificate of mechanic's lien

- Robert M. Singer, [Library of Connecticut Collection Law Forms](#), (2015).  
Form 1-008: Mechanic's Lien Certificate
- Forms Index, [Connecticut Lawyers' Deskbook](#), 2d ed. (2000).  
Chapter XIII: Mechanics' Liens  
Certificate of mechanic's lien  
Notice of intent to file a mechanic's lien
- 1A Douglass B. Wright and John H. Yeomans, [Connecticut Legal Forms](#) (1983). Chapter 9. Liens  
§ 901.1 Mechanic's liens

**CHECKLISTS:**

- Lewis K Parker, ed. [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).  
Chapter 16: Mechanics' Liens by Alan Robert Baker, Gina M. Varano, and Anthony R. Minchella  
A. Checklist for preparing a certificate of mechanic's lien (p. 397)  
B. Checklist for perfecting a mechanic's lien (p. 397)

**CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Labossiere v. T&A Mechanical, LLC](#), Superior Court, Judicial District of Windham, No. CV-176011434-S (June 29, 2017) (64 CLR 731) (2017 WL 3332734). "At the hearing on the application, the plaintiff argued that the certificate failed to satisfy the requirement that it be sworn in accordance with General Statutes § 49-34(1)(C). The defendant argued that the statute requires only a signing under oath, and that the oath need not be set forth in the document itself. Clifford Gideon, the defendant's officer who signed the certificate, testified that Richard Raphael, an attorney, had administered an oath prior to the signing of the certificate. Raphael also testified that he had taken Gideon's statement under oath."
- [Absolute Plumbing and Heating, LLC v. Edelman](#), 146 Conn. App. 383, 387, 77 A. 3d 889, (2013). "Schott engaged the plaintiffs as subcontractors to perform work on the premises.... The plaintiffs subsequently filed separate certificates of mechanic's lien for the amounts they were owed for their work on the project."
- [ProBuild East, LLC v. Poffenberger](#), 136 Conn. App. 184, 187, 45 A. 3d 654, (2012). "In its memorandum of decision, the court first determined that the lien was not invalidated by an incorrect commencement date on the certificate because the error was not made in bad faith and did not harm the defendant."
- [ProBuild East, LLC v. Poffenberger](#), 136 Conn. App. 184, 189, 45 A. 3d 654, (2012). "Section 49-34 sets forth the required contents of a certificate of mechanic's lien. Among the requisites is that the certificate state 'the date of the commencement of the performance

of services or furnishing of materials...’ The commencement date, and not the filing date, establishes the lienor’s priority as against other claimants.”

- [Construction Ken-nection, Inc. v. Cipriano](#), 136 Conn. App. 546, 556, 45 A. 3d 663, (2012). **“Pursuant to § 49-34, the plaintiff was required to file a mechanic’s lien within ninety days after it ceased performing the services or furnishing the materials for the construction of the home.”**
- [36 Deforest Avenue, LLC v. Creadore](#), 99 Conn. App. 690, 696, 915 A.2d 916 (2007). **“Because the project was ongoing, the filing of the defendant’s lien more than ninety days after the performance of services in December, 2003 through May, 2004, and the fact that the final services rendered in November, 2004 were of a different nature than those previously performed, do not compel the conclusion that lien was untimely as to the earlier services.”**
- [Haynes Material Company v. Frank Kerski et al.](#), Superior Court, Judicial District of Ansonia-Milford at Milford, No. CV04-4001622 (July 14, 2005) (39 Conn. L. Rptr. 659) (2005 WL 2078524). **“In the present case, the certificate of mechanic’s lien recorded on the land records contains a proper description of the property subject to the lien. In fact, the mechanic’s lien here is a blanket lien against a ‘plot’ of land. Under § 49-33(a), a plaintiff may file a blanket lien against a ‘plot’ of land that has been subdivided. *Butch v. Mangomutha*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV 900375968 (April 28, 1993, Aurigemma, J.) (8 C.S.C.R. 538). Moreover, the Appellate Court has held that ‘the filing of a blanket lien against a subdivision is the appropriate way for a contractor providing materials and services for a subdivision to proceed, even when some lots in the subdivision have subsequently been transferred to individual owners.’ *Butch v. Thangamuthu*, 37 Conn.App. 547, 550, 657 A.2d 684 (1995); see also *Pomarico v. Gary Construction, Inc.*, 5 Conn.App. 106, 109-11, 497 A.2d 70, cert. denied, 197 Conn. 816, 499 A.2d 1336 (1985). Accordingly, the court determines that the property description contained in the plaintiff’s mechanic’s lien satisfies the requirement of General Statutes § 49-34.”**
- [Louis Gherlone Excavating, Inc. v. McLean Construction Co.](#), 88 Conn. App. 775, 785, 871 A.2d 1057 (2005). **“We therefore conclude that the plaintiff cannot prevail in this action to foreclose the mechanic’s lien because the certification does not contain a verification that the facts contained in it are true.”**
- [David Nichols Builders, Inc. v. Mavor](#), Superior Court, Judicial District of Windham at Putnam, No. CV04-00721855 (Apr. 7, 2005) (39 Conn. L. Rptr. 64) (2005 WL 1089755). **“The mechanic’s lien presently before the court is almost exactly like the one found in Red Rooster [[Red Rooster Construction Co. v. River Associates](#), 224 Conn. 563, 577-78, 620 A.2d 118 (1993)] where the court held that unless said liens are ‘sworn to’ by the lienor, the mechanic’s lien is**



invalid. In both cases the mechanic's lien document filed in the land records, after recitation of the basis for the lien and a claim for same, signed **by party claiming the lien, stated, '. . . personally appeared, and made solemn oath that the facts herein are true . . .'** followed by the signature of the notary alone. As such, without a written oath appearing on the certificate of mechanic's lien, as well as the performance or execution of an oath swearing by the plaintiff, the present mechanic's lien, as that in *Red Rooster*, is ineffective pursuant to § 49-34(1)(c) and subsequent case law illuminating the statutorily required oath.

- [F.B. Mattson Company, Inc. v. Tarte](#), 247 Conn. 234, 239-240, 719 A.2d 1158 (1998). **"We previously have concluded that, although the general rule is that the time period for filing a certificate of mechanic's lien commences on the last date on which services were performed or materials were furnished; *Martin Tire & Rubber Co. v. Kelly Tire & Rubber Co.*, 99 Conn. 396, 403, 122 A. 102 (1923); when work has been substantially completed and the contractor unreasonably has delayed final completion, the time period for filing a certificate of mechanic's lien will be computed from the date of substantial completion. Id. Moreover, when an unreasonable period of time has elapsed since substantial completion of the work, the performance of trivial services or the furnishing of trivial materials generally will not extend the time for filing the certificate past the date of substantial completion. Id., 400. If, however, subsequent to the date of substantial completion, trivial services or materials are provided at the request of the owner, rather than at the initiative of the contractor for the purpose of saving a lien, the furnishing of such work or material will extend the commencement of the period for filing a certificate of mechanic's lien."**

**WEST KEY NUMBERS:**

- Mechanics' Liens  
III. Proceedings to perfect, # 116-160

**DIGESTS:**

- [ALR Digest: Mechanics' Liens](#)

**INDICES:**

- [ALR: Mechanics' Liens](#)

**ENCYCLOPEDIAS:**

- 53 [Am Jur 2d Mechanics' Liens](#) (2017)  
§§ 178-243. Procedure for obtaining or perfecting mechanic's lien  
§§ 178-180. In general  
§§ 181-188. Notice to owner  
§§ 189-243. Claim, statement, or notice of lien  
§§ 244-273. Operation and effect of lien  
§§ 274-277. Assignment of lien or claim
- 56 [C.J.S. Mechanics' Lien](#) (2018).  
§§ 102-198. Perfection of lien
- Maurice T. Brunner, *Abandonment Of Construction Or Of Contract As Affecting Time For Filing Mechanic's Liens Or Time For Giving Notice To Owner*, 52 [ALR3d](#) 797 (1973).

### **TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Maurice T. Brunner, *Sufficiency Of Designation Of Owner In Notice, Claim, Or Statement Of Mechanic's Lien*, 48 [ALR3d](#) 153 (1973).
- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).
  - Chapter 6. Mechanic's liens
    - § 6:5. Substantive requirements of a certificate of mechanic's lien
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).
  - Chapter 15. Mechanic's Liens
    - § 15-3. Service of the Mechanic's Lien
      - § 15-3:1. Service on the "Original Contractor"
- Lewis K. Parker, ed. [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).
  - Chapter 16. *Mechanics' Liens* by Alan Robert Baker and Gina M. Varano, and Anthony R. Minchella
    - Basic principles
      - What are the substantive requirements of a certificate of mechanic's lien? (p. 390)
      - How is a mechanic's lien challenged?
        - Technical defects in the certification of mechanic's lien (p. 394)
- Laurence Levine, *Due Process of Law in Pre-Judgment Attachment And The Filing Of Mechanics' Liens*, 50 [Conn. B.J.](#) 335 (1976).

### **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

Table 2: **Mechanic’s Lien Certificate**

<b>Mechanic’s Lien Certificate</b> Conn. Gen. Stat. <a href="#">§ 49-34 (2019)</a>	
<b>A mechanic’s lien is not valid unless the person performing the services or furnishing the materials</b>	
Within 90-days of ceasing to perform services or furnish materials	(1) within ninety days after he has ceased to do so, lodges with the town clerk of the town in which the building, lot or plot of land is situated a certificate in writing, which shall be recorded by the town clerk with deeds of land
	(A) describing the premises, the amount claimed as a lien thereon, the name or names of the person against whom the lien is being filed and the date of the commencement of the performance of services or furnishing of materials
	(B) stating that the amount claimed is justly due, as nearly as the same can be ascertained
	(C) subscribed and sworn to by the claimant
Within 30-days after lodging certificate	(2) not later than thirty days after lodging the certificate, serves a true and attested copy of the certificate upon the owner of the building, lot or plot of land in the same manner as is provided for the service of the notice in section 49-35.

# Section 3: Notice and Service Requirements

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic resources relating to notice and serving requirements of mechanic's lien in Connecticut.

## **DEFINITIONS:**

- **Perfect:** "Because the mechanic's lien is a creature of statute, a lienor must comply with statutory requirements in order to perfect his claim." [H & S Torrington Assoc. v. Lutz Engineering Co.](#), 185 Conn. 549, 553, 441 A.2d 171 (1981).

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2019)  
§ [49-34](#)(2). "A mechanic's lien is not valid unless the person performing the services or furnishing the materials . . . not later than thirty days after lodging the certificate, serves a true and attested copy of the certificate upon the owner of the building, lot or plot of land in the same manner as is provided for the service of the notice in section 49-35."  
§ [49-35](#). Notice of intent. Liens of subcontractors and materialmen.

## **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Daniel Duffy, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Filing Mechanic's Liens*, OLR Report No. [2006-R-0063](#) (January 20, 2006).  
"You asked for the requirements for filing mechanic's liens in Connecticut, Massachusetts, New York and Rhode Island."
- Daniel Duffy, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Florida's Law on Mechanic's Liens*, OLR Report No. [2004-R-0912](#) (December 13, 2004).  
"You asked if Florida's construction lien law requires contractors to perfect a lien on each job."
- Daniel Duffy, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Massachusetts Lien Notices*, OLR Report No. [98-R-0295](#) (February 17, 1998).  
"You asked for a description of the notice requirements in the Massachusetts mechanic's lien law."
- Helga Niesz, Principal Analyst, Office of Legislative Research, Connecticut General Assembly, *Connecticut And California Mechanic's Lien Statutes*, OLR Report No. [97-R-0628](#) (May 2, 1997).  
"You asked for a comparison of Connecticut and California mechanic's lien statute."

## **FORMS:**

- Diane W. Whitney ... [et al.] [Library of Connecticut Civil Complaints for Business Litigation](#), (2010).  
Volume I: Construction Litigation  
Form 4-010: Notice of intent to file a mechanic's lien

- Forms Index, [Connecticut Lawyers' Deskbook](#), 2d ed. (2000).  
**Chapter XIII: Mechanics' Liens**  
Notice of intent to file a mechanic's lien

### **CHECKLISTS:**

- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).  
Chapter 16: Mechanics' Liens by Alan Robert Baker and Gina M. Varano, and Anthony R. Minchella  
**B. Checklist for perfecting a mechanic's lien** (p. 397)

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Drywall Perfection Corp. v. Quagliano](#), Superior Court, Judicial District of Middlesex, No. MMX-CV10-6002039-S, (Aug. 21, 2012) **(2012 WL 4040273)**. "Pursuant to Connecticut General Statutes Sections 49-33, 49-34 and 49-35, Salafia provided John Quagliano with notice of intent to claim a mechanics lien in the amount of \$4,500.00, recording such notice and intent on the Land Records of the City of Middletown within 90 days of December 17, 2008 when it ceased furnishing labor and materials in improving such property. Salafia also filed on the City of Middletown land records a lis pendens citing this foreclosure. It now seeks **foreclosure of its lien.**"
- [LaMetta & Sons, Inc. v. Bliss](#), Superior Court, Judicial District of Stamford-Norwalk, No. CV09-5011966-S, (Nov. 8, 2011) (52 Conn. L. Rptr. 854) **(2011 WL 6004387)**. "Defendant Baum contends, therefore, that the service upon her was defective under § 49-35(a) because the property and the defendant Bliss's residence were not in the same town, and the statute in that event requires service by registered certified mail only. The court disagrees. When the liened property and the address of the owner are in the same town, the **statute provides that service "shall" be by abode service. But when, as here, the liened property and the owner's residence are not in the same town, the statute provides that service "may be" by registered or certified mail.**"
- [Rollar Construction v. Granite Rock](#), 94 Conn. App. 125, 129 n.7, **891 A.2d 133 (2006)**. "General Statutes § 49-34 includes five requirements to filing a valid mechanic's lien. If any of those requirements fail, the lien is invalid. Because the court found the plaintiff did not comply with two of the requirements of the statute, it is only necessary for us to agree with the court on one of the grounds in order to **affirm the invalidity of the mechanic's lien.**"
- [O.J. Mann Electric Services, Inc. v. The Village At Kensington Place](#), Superior Court, Judicial District of New Haven, No. CV02-0282281S (Dec. 17, 2004) (38 Conn. L. Rptr. 463) (2004 WL 3130257). "The complaint alleges that the plaintiff completed its services on June 19, 2001, and the parties' stipulated that plaintiff filed the mechanic's lien on July 14, 2002. The court requested supplemental briefing on whether the plaintiff was required to plead and prove compliance with General Statutes §§ 49-34 and 49-35(a). Although this and other trial courts have held that noncompliance with the requirements of those statutes can defeat a mechanic's lien; see, e.g., *Yurchuk v. Soro Land Co.*, Superior Court, judicial district of

Litchfield, Docket No. CV 00-00839995 (July 17, 2003); *Santa Fuel, Inc. v. Vargo*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV 00-0374050 (May 30, 2001, Brennan, J.) (29 Conn. L. Rptr. 547); *Steeltech Building Products v. Viola*, Superior Court, judicial district of Hartford, Docket No. CV 98-0580266 S (May 15, 2000, Wagner, J.T.R.); neither party has cited, nor has the court found, authority requiring a party seeking to enforce a mechanic's lien to plead or prove compliance with notice requirements of the mechanic's lien statutes, in the absence of proof of non-compliance."

- *Allen Construction, v. Cabanilla*, Superior Court, Judicial District of Fairfield, No. CV00-376419S (Jun. 7, 2001) (2001 WL 746450). "The plaintiff filed a supplemental memoranda and therein argues that the inclusion of 'Inc.' after Allen Construction was a misnomer or scrivener's error and that the proper denomination should have been Allen Construction, otherwise known as Jesse Allen d/b/a Allen Construction. The plaintiff contends that it abided by the notice and service requirements set out in General Statutes §§ 49-35(a) and [49-34](#) and, hence, the defendants were not misled or confused by the misnomer."

**WEST KEY NUMBERS:**

- Mechanics' Liens  
IV.Proceedings to perfect, # 116-160

**DIGESTS:**

- [ALR Digest](#): *Mechanics' Liens*

**ENCYCLOPEDIAS:**

- 53 [Am Jur 2d](#) *Mechanics' Liens* (2017)
  - § 181. Notice to owner, generally
  - § 182. Sufficiency of notice
  - § 183. —Content of notice under Uniform Construction Lien Act
  - § 184. Formal requisites of written notice
  - § 185. Time of notice
  - § 186. Service of notice
  - § 187. Persons to be served
  - § 188. Effect of failure to serve sufficient or proper notice
- 56 [C.J.S.](#) *Mechanics' Lien* (2018)
  - §§ 105-117. Notice to owner
    - §§ 105-108. In general
    - §§ 109-112. To whom given
    - §§ 113-114. Time for giving
    - §§ 115-117. Form and contents
- Maurice T. Brunner, *Abandonment Of Construction Or Of Contract As Affecting Time For Filing Mechanic's Liens Or Time For Giving Notice To Owner*, 52 [ALR3d](#) 797 (1973).
- Maurice T. Brunner, *Sufficiency Of Designation Of Owner In Notice, Claim, Or Statement Of Mechanic's Lien*, 48 [ALR3d](#) 153 (1973).

**TEXTS & TREATISES:**

- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

## Chapter 6. Mechanic's liens

§ 6:6. Recording and notice requirements

- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).

## Chapter 15. Mechanic's Liens

§ 15-3. Service of the Mechanic's Lien

§ 15-3:1. Service on the "Original Contractor"

- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).

Chapter 16: *Mechanics' Liens* by Alan Robert Baker and Gina M. Varano, and Anthony R. Minchella

Basic principles - What are the notice requirements of a certificate of mechanic's lien?

Table 3: Service of Notice on Owner or Original Contractor

<b>Service of Notice on Owner or Original Contractor</b>	
<p>"A mechanic's lien is not valid unless the person performing the services or furnishing the materials . . . not later than thirty days after lodging the certificate, serves a true and attested copy of the certificate upon the owner of the building, lot or plot of land in the same manner as is provided for the service of the notice in section 49-35." <b>Conn. Gen. Stat. § 49-34</b> (2019).</p>	
<b>Manner of service on owner or original contractor</b>	
<p>Resides in same town</p>	<p>". . . The notice shall be served upon the owner or original contractor, if such owner or original contractor resides in the same town in which the building is being erected, raised, removed or repaired or the lot is being improved, or the plot of land is being improved or subdivided, <b>by any indifferent person, state marshal or other proper officer</b>, by leaving with such owner or original contractor or at such owner's or the original contractor's <b>usual place of abode a true and attested copy thereof.</b>" <b>Conn. Gen. Stat. § 49-35(a)</b> (2019). (emphasis added)</p>
<p>Does not reside in same town</p>	<p>". . . If the owner or original contractor does not reside in such town, but has a <b>known agent therein</b>, the notice may be so served upon the agent, otherwise it may be served by any <b>indifferent person, state marshal or other proper officer, by mailing</b> a true and attested copy of the notice by registered or certified mail to the owner or original contractor at the place where such owner or the original contractor resides." <b>Conn. Gen. Stat. § 49-35(a)</b> (2019). (emphasis added)</p>
<p>Unclaimed 2 or more</p>	<p>". . . <b>If</b> such copy is returned unclaimed, notice to such owner or original contractor shall be given by publication in accordance with the provisions of section 1-2. When there are two or more owners, or two or more original contractors, the notice shall be so served <b>on each owner and on each original contractor</b>. The notice, with the return of the person who served it endorsed thereon, shall be returned to the original maker of the notice not later than thirty days after the filing of the certificate pursuant to section 49-34." <b>Conn. Gen. Stat. § 49-35(a)</b> (2019). (emphasis added)</p>



## Notice of Service by a Subcontractor to Owner and Original Contractor

Written contract	<p><b>Notice to Owner:</b>  <a href="#">H &amp; S Torrington Associates v. Lutz Engineering Co., Inc.</a> 185 Conn. 549, 553, 554,555,556, 441 A2d. 171 (1981).</p> <p>"General Statutes 49-35(a) provides . . . that no subcontractor except one whose contract with the original contractor is in writing and has been assented to in writing by the other party to the original contract is entitled to claim any...mechanic's lien, unless after commencing, and not later than 60 days (currently 90 days) after ceasing to furnish materials or render services for such construction, he gives written notice to the owner of the building, lot or plot of land...and intends to claim a lien..."</p> <p>"General Statutes 49-34,..., required anyone claiming a mechanic's lien to cause to be recorded a written lien certificate within 60 days (currently 90 days) after he has ceased performing services or furnishing materials , and within the same time, or prior to lodging of the certificate but not later than seven days (currently 30 days) after lodging the certificate...[to serve]...a true and attested copy of the certificate upon the owner of the building, lot or plot of land..."</p> <p>"Both notice requirements may be satisfied in one document....the defendant substantially complied with the notice requirements of both statutes when it served a copy of the lien certificate upon the property owners . . ."</p> <p><b>Notice to Original Contractor:</b>          "...a subcontractor...gives written notice to the owner of the building, lot or plot of land <b>and to the original contractor</b> that he or she has furnished or commenced to furnish materials, or rendered or commenced to render services, and intends to claim a lien therefore on the building, lot or plot of land: <b>provided an original contractor shall not be entitled to such notice, unless</b>, not later than 15 days after commencing the construction raising, removal or repairing of the building, or the development of any lot, or the site development or subdivision of any plot of land, such original contractor lodges with the town clerk of the town in which the building, lot or plot of land is situated an affidavit in writing, which shall be recorded by the town clerk with deeds of land, (1) stating the name under which such original contractor conducts business, (2) stating the original contractor's business address, and (3) describing the building, lot or plot of land." Conn. Gen. Stat. § 49-35(a) (2019). (emphasis added).</p>
No written contract	<p>"<b>No subcontractor</b>, without a written contract complying with the provisions of this section, and <b>no person</b> who furnishes material or renders services by virtue of a contract with the original contractor or with any subcontractor, <b>may be required</b> to obtain an agreement with, or the consent of, the owner of the land, as provided in section 49-33, to enable him to claim a lien under this section." Conn. Gen. Stat. § 49-35(b) (2019). (emphasis added).</p>

# Section 4: Discharge or Reduction of Mechanic's Lien

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic references related to discharge or reduction of a mechanic's lien

## **TREATED ELSEWHERE:**

- See [Section 6: Dissolution of a Mechanic's Lien by Substitution of Bond](#)

## **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)
  - [§ 49-35a](#). Application for reduction or discharge. Forms. Hearing. Entry Fee.
  - [§ 49-35b](#). Burden of proof at hearing. Authority of court.
  - [§ 49-35c](#). Appeal.
  - [§ 49-35d](#). Validation of lien recorded prior to April 22, 1975.
  - [§ 49-36](#). Liens limited; apportionment; payments to original contractor.
  - [§ 49-37](#). Dissolution of mechanics' lien by substitution of bond. Joinder of actions on claim and bond.
  - [§ 49-39](#). Time limitation of mechanic's lien. Action to foreclose privileged.
  - [§ 49-40a](#). Mechanic's lien expired by limitation of time.
  - [§ 49-51](#). Discharge of invalid lien.

## **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication.

- George Coppola, Chief Attorney, Office of Legislative Research, Connecticut General Assembly, *RE: Release of Mechanic's Liens*, OLR Report No. [94-R-0035](#) (January 7, 1994).

"You asked us to review the enclosed letter from attorney Mark Leder concerning the release of mechanic's liens."

## **FORMS:**

- Conn. Gen. Stat. (2019)
  - [§ 49-35a](#). Application for reduction or discharge. *Forms*. Hearing. Entry Fee. (emphasis added)
- 3A Joel Kaye and Wayne Efron, Connecticut Practice Series, [Civil Practice Forms](#), 4<sup>th</sup> ed. (2004).
  - Form S-151. Application, order and summons for discharge or reduction of mechanic's lien. See [Figure 1. Application for discharge or reduction of mechanic's lien](#)
  - Form S-152: Release of Mechanic's Lien
- Robert M. Singer, [Library of Connecticut Collection Law Forms](#), (2015).
  - Form 7-002 Motion for discharge or reduction of mechanic's lien

- 1A Douglass B. Wright and John H. Yeomans, [Connecticut Legal Forms](#) (1983).  
     § 901.5. Application for discharge or reduction of  
     **mechanic's lien**  
     Order for hearing and notice  
     Order

**CHECKLISTS:**

- 12A [Am Jur Legal Forms 2d Mechanics' Liens](#) (2018).  
     § 173:31. Form drafting Guide—Checklist—Matters to  
     consider when drafting an instrument to release or  
     **otherwise discharge a mechanic's lien**

**CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Alina Wegrzyniak v. Handy Construction LLC.](#), Superior Court, Judicial District of Hartford, No. X07HHDCV166078057S (October 18, 2017) (65 Conn. L. Rptr. 342) (2017 WL 5505178). "The correct amount of the lien is a simple matter of determining the contract amount and subtracting the amounts paid. Thus, the burden of proving the invalidity by clear and convincing evidence is not great. In any case, here the court has already held that the Wegrzyniaks in trying to get rid of the entire lien haven't even met the lesser burden of a preponderance of the evidence. Therefore, at least in this case, the burden of proof would make no difference. Allowing a mechanic a lien without a hearing doesn't deprive the owner of the liened land of due process. The balance of the parties' competing interest in the property combined with the relative ease of discharging bogus liens makes the process fair enough to pass constitutional muster. Therefore, to the extent the Wegrzyniaks base their application to discharge the mechanic's liens in this case on the ground that they are void as unconstitutional, the application is denied."
- [DPM New Britain Self Storage, LLC v. ABMG General Contracting Corp.](#), Superior Court, Judicial District of New Britain, No. HHBCV176036815S (June 12, 2017) (64 Conn. L. Rptr. 825) (2017 WL 3613509). "If, after the work is substantially done, the claimant for the material furnished or services rendered shall unreasonably delay the completion of the work, the date of beginning of the sixty-day period will be taken as the date when the work was substantially done. No trivial or inconsequential service or work done after the substantial completion of the building will extend the time for claiming the lien, or revive an expired lien when an unreasonable period has elapsed since the substantial completion."
- [CLW Real Estate Developments, LLC v. SAB Construction Management, LLC](#), Superior Court, Judicial District of Middlesex at Middletown, No. CV16- 6016221-S (October 26, 2016) (2016 WL 8310081). "The court finds that SAB did not establish probable cause to support the validity of the lien. It

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

did not do any work on the site development or subdivision of the Liened Property. Rather, it is attempting to use the **vehicle of the mechanic's lien to secure** its claim to contract damages. As stated by the court in [E and M Custom Homes, LLC v. Negron, 140 Conn. App. 92, 104, 59 A.3d 262](#), that is **not a proper use of the mechanic's lien statutes. The application to discharge the lien is granted and the lien is discharged."**

- [Csak v. A.P. Savino, LLC](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. CV16-6027678-S (May 18, 2016) (62 Conn. L. Rptr. 366) (2016 WL 3179778). **"The Connecticut General Statutes § 49-35b sets forth the burden of proof at a hearing to discharge a mechanic's lien. At the hearing held on the application, the lienor shall first be required to establish that there is probable cause to sustain the validity of his lien. Any person entitled to notice may be heard. Once probable cause has been found, the burden shifts to the moving party to prove by *clear and convincing evidence* that the validity of the lien should not be sustained, or the amount of the lien is excessive and should be reduced."**

**"The court has the power to deny the application, order the lien discharged, reduce the amount of the lien, or reduce the amount of the lien conditioned upon the posting of bond with surety."** [emphasis in original]

- [Grade A Market, Inc. v. Surplus Contractors, LLC](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. CV14-6023490-S (May 26, 2015) (60 Conn. L. Rptr. 415) (2015 WL 3798047). **"... the term "owner" in § 49-35a will not be construed more broadly than its commonly understood meaning. A lessee of real property is not an owner of the property for purposes of the mechanic's lien statute, and, therefore, it does not have standing to prosecute an application to discharge a mechanic's lien pursuant to § 49-35a."**
- [Northland Two Pillars, LLC v. Harry Grodsky & Co., Inc.](#), 133 Conn. App. 226, 232, 35 A.3d 333 (2012). **"General Statutes § 49-35a provides a procedure for seeking the discharge or the reduction of a mechanic's lien. General Statutes § 49-35b(b)(3) authorizes a court to reduce the amount of a mechanic's lien if the amount is found to be excessive by clear and convincing evidence. General Statutes § 49-35c provides that any such order entered pursuant to § 49-35b(b) shall be deemed a final judgment for purposes of appeal. There also is a statutory mechanism for discharging or reducing the amount of the lien by posting a bond. See General Statutes § 49-35b (b)(4)."**

- [FCM Group, Inc. v. Miller](#), 300 Conn. 774, 816-17, 17 A.3d 40 (2011). "...we briefly address the plaintiff and Mercede's claim, raised in their cross appeal, that the attorney trial referee improperly determined that the \$343,351.47 mechanic's lien securing those damages was invalid. We reject this claim. Because the plaintiff was not entitled to recover delay damages, it necessarily follows that any mechanic's lien securing those damages is invalid. It also follows that the trial court properly concluded that Jeffrey Miller is entitled to \$5000 in damages under § 49-8(c) as a result of the plaintiff's failure to release the invalid lien as Jeffrey Miller had requested."

**WEST KEY NUMBERS:**

- **Mechanics' Lien**  
IX. Release, #236  
X. Payment or Satisfaction, 237-244

**ENCYCLOPEDIAS:**

- 53 [Am Jur 2d Mechanics' Liens](#) (2017)  
§§ 301-310. Extinguishment, discharge, payment or satisfaction  
§§ 301-304. In general  
§§ 305-306. On giving bond or other undertaking  
§§ 307-308. Payment  
§§ 309-310. Payment procedure
- 56 [C.J.S. Mechanics' Lien](#) (2018).  
§§ 276-341. Waiver, discharge, release, and satisfaction
- Carol Vento, *Discharge Of Mortgage And Taking Back Of New Mortgage As Affecting Lien Intervening Between Old And New Mortgages*, 43 [ALR5th](#) 519 (1996).

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).  
**Chapter 6. Mechanic's liens**  
§ 6:9. Reduction or discharge of liens  
§ 6:11. Discharge of invalid lien
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).  
**Chapter 15. Mechanic's Liens**  
§ 15-9. **Reduction or discharge of a mechanic's lien**  
§ 15-9:1. Venue and service  
§ 15-9:2. Appeals  
§ 15-9:3. Appeal by lienor  
§ 15-9:4. The size of the bond  
§ 15-9:5. Effect on a foreclosure  
§ 15-9:6. Appeal by owner
- Hon. Eliot D. Prescott, [Connecticut Appellate Practice & Procedure](#), 5<sup>th</sup> ed. (2016).

Chapter 3-1. Final judgment rule  
§ 3-1:5.2. Analogous remedies  
Chapter 4-2. Time to appeal  
§ 4-2:3.3. **Mechanic's liens**  
Chapter 4-4. Stay of execution  
§ 4-4:1.2. Exceptions to automatic stay

- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).  
Chapter 16: ***Mechanics' Liens*** by Alan Robert Baker, Gina M. Varano, and Anthony R. Minchella  
**How is a mechanic's lien discharged?**
  1. Application for reduction or discharge of a **mechanic's lien**
    - a. Burden of proof at the hearing on the application to reduce or discharge the **mechanic's lien**
    - b. Appeals
  2. **Invalidation of the mechanic's lien as a matter of law**
  3. **Dissolution of a mechanic's lien by substitution of a surety bond**

Figure 1: Application for Discharge or Reduction of Mechanic's Lien  
APPLICATION FOR DISCHARGE or REDUCTION OF MECHANIC'S LIEN

To the .... Court of ....

The undersigned represents:

1. That .... is the owner of the real estate described in Schedule A attached hereto.
2. That the names and addresses of all other owners of record of such real estate are as follows:
3. That on or about ...., (date) ...., (name of lienor) of .... (address of lienor) placed a mechanic's lien on such real estate and gave notice thereof.
4. That such lien is excessive.
5. That the applicant seeks an order for discharge (or reduction) of such lien.

Name of Applicant

By \_\_\_\_\_  
Applicant's Attorney

ORDER

The above application having been presented to the court, it is hereby ordered, that a hearing be held thereon at .... a.m. and that the applicant give notice to the following persons: (Names and addresses of persons entitled to notice) of the pendency of said application and of the time when it will be heard by causing a true and attested copy of the application, and of this order to be served upon such persons by some proper officer or indifferent person on or before .... and that due return of such notice be made to this court.

Dated at .... this .... day of .... 20...

SUMMONS

To a state marshal of the county of ...., or either constable of the town of ...., in said county,

Greeting:

By authority of the state of Connecticut, you are hereby commanded to serve a true and attested copy of the above application and order upon ...., of .... by leaving the same in such person's hands or at such person's usual place of abode (or such other notice as ordered by the court) on or before ....

Hereof fail not but due service and return make.

Dated at .... this .... day of .... 20...

\_\_\_\_\_  
Commissioner of the Superior Court

## Section 5: Waiver of a Mechanic's Lien

A Guide to Resources in the Law Library

### **SCOPE:**

Bibliographic references related to release or waiver of a mechanic's lien in Connecticut

### **DEFINITIONS:**

- **"Construction contract" or "contract" includes:** "any contract for the construction, renovation or rehabilitation in this state on or after October 1, 1999, including any improvements to real property that are associated with such construction, renovation or rehabilitation, or any subcontract for construction, renovation or rehabilitation between an owner and a contractor, or between a contractor and a subcontractor or subcontractors, or between a subcontractor and any other subcontractor." Conn. Gen. Stat. (2019) § [42-158i](#) (2). (emphasis added)
- **"Construction contract" or "contract" does not include:** "(A) Any public works or other building contract entered into with this state, the United States, any other state, and any municipality or other political subdivision of this state or any other state, (B) a contract or project funded or insured by the United States Department of Housing and Urban Development, (C) a contract between an owner and a contractor for an amount of twenty-five thousand dollars or less or a subcontract which results from such a contract, or (D) a contract for a building intended for residential occupancy containing four or less units."(emphasis added)
- **When mechanic's lien waiver is void:** "Any provision in a construction contract or any periodic lien waiver issued pursuant to a construction contract that purports to waive or release the right...to (1) claim a mechanic's lien, or (2) to make a claim against a payment bond, **for services, labor or materials which have not yet been performed and paid for** shall be void and of no effect." Conn. Gen. Stat. (2019) § [42-158j](#) (a). (emphasis added)

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2019) § [42-158j](#). Clauses waiving right to claim mechanic's lien or claim against a payment bond void.  
§ [42-158i](#)(2). Definitions: "Construction contract" or "contract."



## **LEGISLATIVE:**

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Daniel Duffy, Principal Analyst, Florida's Law On Waiver Or Release Of Mechanic's Liens, Connecticut General Assembly, Office of Legislative Research, OLR No. [2004-R-0723](#) (September 17, 2004).

**"You asked for a summary of Florida's law on waiver or release of mechanic's liens."**

- George Coppola, Chief Attorney, *Release of Mechanic's Liens*, Connecticut General Assembly, Office of Legislative Research, OLR No. [94-R-0035](#) (January 7, 1994).

## **FORMS:**

- 12A [Am Jur Legal Forms 2d](#) *Mechanics' Liens* (2018)
  - § 173:34. Waiver of lien
  - § 173:35. Waiver of lien—Provision—Waiver only as to services rendered to specified date

## **CHECKLISTS:**

- 12A [Am Jur Legal Forms 2d](#) *Mechanics' Liens* (2018)
  - § 173:31. Form drafting guide—Checklist—Matters to consider when drafting an instrument to waive a mechanic's lien

## **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [E and M Custom Homes, LLC v. Negron](#), 140 Conn. App. 92, 106, 59 A. 3d 262 (2013). **"The plaintiff also claims that the court improperly interpreted the contractor's affidavit as a waiver of its rights to enforce the monies due under the first four stages of the construction budget. He argues that the affidavit did not limit the amount due under the lien, but merely attested to the fact that the amounts from the construction loan had been disbursed and that the subcontractors had been paid. We are not persuaded."**
- [Milone & MacBroom, Inc. v. Winchester Estates](#), Superior Court, Judicial District of Litchfield, No. CV10-6002884-S (Oct. 25, 2011) (52 Conn. L. Rptr. 793) (2011 WL **5458410**). **"The parties do not dispute that the lien waiver was signed. The issue before the court is whether the waiver is void pursuant to General Statutes § 42-158/ because, at the time the plaintiff signed the waiver, it had not been paid in full for work that it had already performed."**

**"General Statutes § 49-33 provides for the priority of the mechanic's lien as well as the right to waive the right to file a lien. General Statutes § 42-158/ provides restrictions upon the waiver of a mechanic's lien, but does not usurp the right of a lienor to elect to waive its right to file a mechanic's lien. Any other interpretation of General Statutes § 42-158/ would put it in conflict with General Statutes § 49-33, counter to the well-established precepts of statutory construction."**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Capp Industries, Inc. v. Schoenberg](#), 104 Conn. App. 101, 114, 932 A.2d 453 (2007). “Because the ten mechanic’s liens were not clear and unambiguous, we will upset the court’s findings as to the parties’ intent only if it is clearly erroneous. A review of the record reveals that it is not. As mentioned previously, the court credited the testimony of the Cappialis that the waivers were intended to cover the portions of work for which they had received payment, rather than all of the work performed as of that time.”
- [Bialowans v. Minor](#), 209 Conn 212, 216-217, 550 A.2d 637 (1988). “...the signing of the lien waiver agreement by the plaintiffs enabled the defendants to gain access to additional financing for the construction. This additional funding, procured as a result of the plaintiffs’ waiver of their lien rights, directly benefited the plaintiffs by enhancing their expectation of payment for work performed and materials supplied. It is precisely this increased expectation of payment which *Townsend* [101 Conn. 86 (1924)] holds is sufficient legal consideration to support a waiver of lien rights.”
- [Pero Building Co. v. Smith](#), 6 Conn. App. 180, 185, 504 A.2d 524 (1986). “The right to a mechanic’s lien is not a contractual right, rather it is a statutory right available to secure, as well as to enforce, payment for materials and labor rendered. *Lampson Lumber Co. v. Rosadino*, 141 Conn. 193, 196, 104 A.2d 362 (1954); *Purcell, Inc. v. Libbey*, Supra [111 Conn. 132, 136, 149 A. 225 (1930).]; *New Haven Orphan Asylum v. Haggerty Co.*, 108 Conn. 232, 239, 142 A. 847 (1928). The effect of a waiver clause is to limit the avenues available to the plaintiff to collect for such material and labor. Once the statutory right to a mechanic’s lien has been waived, there is no provision under the statute for the revival of that right upon the breach of a contract. See General Statutes 49-33 et seq.”

**WEST KEY NUMBERS**

- Mechanics’ Lien  
V. Waiver of right to lien, #207-217

**ENCYCLOPEDIAS:**

- 53 [Am Jur 2d](#) *Mechanics’ Liens* (2017)  
VII. Loss or extinguishment of lien  
§§ 278-286. Waiver or release  
§ 278. Claimant’s right to waive or release claim  
§ 279. Express waiver or release  
§ 280. -- Consideration  
§ 281. -- Construction and effect  
§ 282. Waiver or release by contractor as waiving or releasing lien of subcontractor, materialman, or laborer  
§ 283. Waiver or release of lien on portion of property as affecting lien on portion not released  
§ 284. Implied waiver or release

§ 285. Effect of arbitration  
§ 286. Effect of fraud

- 56 [C.J.S. Mechanics' Lien](#) (2018).  
§§ 276-341. Waiver, discharge, release, and satisfaction  
§ 276-280. Waiver of right to lien. In general  
§ 278. Persons entitled to set up waiver  
§ 281-282. What constitutes a waiver  
§ 283-286. - Agreements  
§ 287-293. - Taking or transfer of note, bill, draft or order  
§ 292-293. Taking security
- Carol Vento, *Discharge Of Mortgage And Taking Back Of New Mortgage As Affecting Lien Intervening Between Old And New Mortgages*, 43 [ALR5th](#) 519 (1996).

### **TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).  
Chapter 1. Contract interpretation  
§ 1:13. Waiver of lien rights  
**Chapter 6. Mechanic's liens**  
§ 6:8. Lien waivers
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).  
**Chapter 15. Mechanic's Liens**  
§ 15-8. The lien waiver defense
- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).  
Chapter 16: *Mechanics' Liens* by Alan Robert Baker, Gina M. Varano, and Anthony R. Minchella  
How is a mechanic's lien challenged?  
**2. Mechanic's lien waivers**

### **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

- Ellen L. Sostman and Duncan J. Forsyth, *Mechanics' Lien Waivers In Connecticut: The Myths And The Realities*, 63 [Conn. B.J.](#) 195 (1989).
- Edwin L. Baum, Note, *Conditional Sale Contract—Waiver Of Mechanic's Lien—Election Of Remedies—Hartlin v. Cody*, 144 *Conn.* 499, 134 *A.2d* 245 (1957), 32 [Conn. B.J.](#) 299 (1958).

# Section 6: Dissolution of a Mechanic's Lien by Substitution of Bond

A Guide to Resources in the Law Library

## **SCOPE:**

Bibliographic references related to dissolution of mechanic's lien by substitution of surety bond.

## **DEFINITIONS:**

- **Purpose:** "[Conn. Gen. Stats.] Section 49-37 is designed to facilitate the transfer of real property by creating a mechanism for removing a mechanic's lien from the land records and substituting for it a bond. [Henry F. Raab Connecticut, Inc. v. J. W. Fisher Co.](#), 183 Conn. 108, 116, 438 A.2d 834 (1981), [Six Carpenters, Inc. v. Beach Carpenters Corporation](#), 172 Conn. 1, 6, 372 A.2d 123 (1976). That purpose, however, does not preclude filing **the bond as a way to challenge the lien.**" [PDS Engineering & Const. v. Double RS](#), 42 Conn. Sup. 460, 464, 627 A.2d 959 (1992).
- **Any Person Interested:** "An examination of the pertinent statutes in our statutory scheme indicates that the legislative intent in enacting 49-37(a) was to enable the **owner or any person 'interested' in the property to obtain a dissolution of the mechanic's lien so long as the lienor's rights are not prejudiced in doing so.**" [Henry F. Raab Connecticut, Inc. v. J. W. Fisher Co.](#), 183 Conn. 108, 115, 438 A.2d 834 (1981).
- "The remedial character of the statutory scheme involving mechanics' liens is clear and the legislature, in furtherance of that remedial intent, has enacted § 49-37(a) to permit one who is not an owner directly to institute a proceeding to that end. The statutory procedure requires, however, that, on a dissolution, the lienor have a viable fund to look to for the payment of his claim. The requirement in § 49-37(a) that before such a dissolution is ordered, the judge must also be "satisfied that the applicant in good faith intends to contest such lien" contributes to assuring the attainment of the legislative purpose of this remedial legislation. We deem it fair to say that the legislature did not delineate what it meant in § 49-37(a) by "any person interested therein," i.e., in the real estate lien because it chose not to do so, since not every case within the anticipated reach of its remedial object might fall within a more precise definition. The transferability of real estate and the removal of encumbrance in titles are also advanced by the statutory scheme of § 49-37(a) and the interpretation we give in this case. The contract between Turner and Raab, Fisher's lien and the safeguards and objects of this legislation furnish a firm foundation for finding that Raab is a person "interested" in the real estate

under this statute.” [Henry F. Raab Connecticut, Inc. v. J.W. Fisher Co.](#), 183 Conn. 108, 116, 438 A.2d 834 (1981).

### **STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

### **FORMS:**

- Conn. Gen. Stat. (2019)  
[§ 49-37. Dissolution or mechanic’s lien by substitution of bond.](#) Joinder of actions on claim and bond.
- Diane W. Whitney ... [et al.] [Library of Connecticut Civil Complaints for Business Litigation](#), (2010).  
Volume I: Construction Litigation  
Form 4-012 : **Release of mechanic’s lien upon substitution of bond**
- 3 Joel Kaye and Wayne Efron, Connecticut Practice Series, [Civil Practice Forms](#), 4<sup>th</sup> ed. (2004).  
Form 704.30 **Dissolution of mechanic’s lien on substitution of bond**
- 1A Douglass B. Wright and John H. Yeomans, [Connecticut Legal Forms](#) (1983).  
§ **901.6. Application for dissolution of mechanic’s lien by substitution of bond**  
Order for notice and hearing  
Order  
Bond  
Certification into court
- 12A [Am Jur Legal Forms 2d Mechanic’s Liens](#) (2018)  
§ 173: 40. Bond to discharge existing lien

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Monteiro's Masonry & Const., LLC v. Axis Point Cross Highway, LLC](#), Superior Court, Judicial District of Fairfield, No. CV08-5016026-S (Oct. 27, 2011) (2011 WL 5531377).  
“...the defendant applied to Liberty Mutual for a surety bond with which to release the plaintiff’s mechanic’s liens. Liberty Mutual approved the application and granted the defendant a surety bond. On November 21, 2007, the defendant filed an application in Stamford Superior Court to substitute a bond for the mechanic’s lien, pursuant to General Statutes § 49–37. On February 11, 2008, the court, by agreement of the parties, ordered the plaintiff’s mechanic’s lien dissolved. A bond, with the defendant as principal and Liberty Mutual as surety, in the amount of \$102,975 was substituted for the plaintiff’s lien.”
- [River Dock & Pile, Inc. v. Ins. Co., North America](#), 57 Conn. App. 227, 232, 747 A.2d 1060 (2000). “The bond

voluntarily furnished by the defendant must be treated the same as if the bond had been furnished pursuant to a court order in accordance with § 49-37(a).”

- [Six Carpenters, Inc. v. Beach Carpenters Corporation](#), 172 Conn. 1, 6, 372 A.2d 123 (1976). “A reading of the pertinent statutes reveals that the legislative intent in enacting both [P.A. 75-48 Section] 8(a) and its predecessor [Conn. Gen. Stat. Section] 49-37 was to enable the owner or other person having an interest in the property to obtain release of the mechanic's lien so long as the lienor's rights are not thereby prejudiced. The lienor's rights are considered adequately protected if the landowner demonstrates a good-faith intention to contest the lien and substitutes a bond with surety in its place. Thus, while the statutory provisions are designed to facilitate the transfer of the property by dissolution of the lien, they are also intended to ensure the continued existence of assets out of which the lienor may satisfy his claim if he should later prevail and obtain a judgment on the merits of the mechanic's lien.”

**WEST KEY NUMBERS:**

- Mechanics' Lien  
IV. Bond or deposit to prevent or discharge lien, #218-229

**ENCYCLOPEDIAS:**

- 53 [Am Jur 2d](#) *Mechanics' Liens* (2017)  
§§ 301-310. Extinguishment, discharge, payment or satisfaction  
§§ 305 – 306. On giving bond or other undertaking
- 56 [C.J.S.](#) *Mechanics' Lien* (2018).  
§§ 298-302. Bond or deposit to prevent or discharge lien  
§ 298. Bond or undertaking in general  
§ 299. Deposit in court in general  
§ 300. Who may give security; time  
§ 301. Effect of bond or deposit  
§ 302. Liability on bond  
§ 303-305. Form, requisites, and validity of bond  
§ 306-309. Action on bond

**TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).  
Chapter 6. Mechanic's Liens  
§ 6:10. Dissolution of lien by bond substitution
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).  
Chapter 15. Mechanic's Liens  
§ 15-10. Dissolution of mechanic's lien by

substitution of bond

§ 15-10:1. Qualified applicant

§ 15-10:2. Venue

§ 15-10:3. Hearing

§ 15-10:4. Appeal

§ 15-10:5. Suit on bond

§ 15-10:5.1. Effect on foreclosure

§ 15-10:6. Other post-bond litigation

- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).

Chapter 16: *Mechanics' Liens* by Alan Robert Baker, Gina M. Varano, and Anthony R. Minchella

Basic principles

**How is a mechanic's lien discharged?**

**3. Dissolution of a mechanic's lien by  
substitution of a surety bond**

# Section 7: Foreclosure of Mechanic's Lien

A Guide to Resources in the Law Library

**SCOPE:** Bibliographic references related to foreclosure of a mechanic's lien

**TREATED ELSEWHERE:**

- [Prejudgment Proceedings in Connecticut Mortgage Foreclosures](#) (Research Guide)
- [Foreclosure of Condominium Liens in Connecticut](#) (Research Guide)

**DEFINITIONS:**

- **One-Year Period:** "Section 49-39 is clear and unambiguous that a mechanics lien may remain in effect for as long as one year *after* it has been perfected. There can be no doubt that the one-year period begins to run the **day following the day on which the lien is perfected.**" [Curran v. Samos](#), Superior Court, Judicial District of Litchfield, No. CV 03 0091852S (Jan. 27, 2004), 36 Conn. L. Rptr. 409, 410 (March 15, 2004), 2004 WL 303895.
- **Time Limitation:** "The plain intent of this statute [Conn. Gen. Stats. § 49-39] is to clear the title to the premises unless an action of foreclosure is brought within the time **limited for the continuance of the lien.**" [Persky v. Puglisi](#), 101 Conn. 658, 666, 127 A. 351 (1925).
- **Lis Pendens:** "...the purpose of the lis pendens recordation requirement in Connecticut's mechanic's lien statute is not only to give constructive notice of the pending action but also to set a time limit for the **foreclosure of a mechanic's lien...**" [H.G. Bass Associates v. Ethan Allen, Inc.](#), 26 Conn. App. 426, 432, 601 A.2d 1040 (1992).

**STATUTES:**

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website.

- Conn. Gen. Stat. (2019)
  - § [49-33](#)(b). "The claim is a lien on the land, building and appurtenances or lot or in the event that the materials were furnished or services were rendered in the site development or subdivision of any plot of land, then on the plot of land and the claim takes precedence over any other encumbrance originating after the commencement of the services, or the furnishing of any such materials, subject to apportionment as provided in section 49-36."
  - § [49-33](#)(i). "Any mechanic's lien may be foreclosed in the same manner as a mortgage."
  - § [49-39](#). Time limitation of mechanic's lien. Action to foreclose privileged.
  - § [49-47a](#). Form of mechanic's lien foreclosure certificates.
  - § [47-258](#)(b). 'Superpriority' lien for assessments and other sums owed to condominium association.
  - § [52-325](#). Notice of lis pendens.



§ [52-249](#). Costs and attorney's fees in actions for foreclosure and substitution of bond.

§ [52-249a](#). Costs and attorney's fees in action upon a bond substituted for a mechanic's lien.

### **FORMS:**

- Robert M. Singer, [Library of Connecticut Collection Law Forms](#), (2015).  
Form 7-001 Foreclosure of mechanic's lien
- Diane W. Whitney ... [et al.], [Library of Connecticut Civil Complaints for Business Litigation](#), (2010).  
Volume I: Construction Litigation  
Form 4-003 : Notice of lis pendens
- 3A Joel Kaye and Wayne Effron, Connecticut Practice Series, [Civil Practice Forms](#), 4<sup>th</sup> ed. (2004).  
Form S-149: Complaint for foreclosure of mechanic's lien by contractor  
Form S-150: Complaint for foreclosure of mechanic's lien by materialman or subcontractor
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).  
Form 6-030. Complaint for foreclosure of mechanic's lien
- 1A Douglass B. Wright and John H. Yeomans, [Connecticut Legal Forms](#) (1983).  
§ 901.7. Foreclosure of Mechanic's lien: Complaint

### **CASES:**

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [James E. Burns, Jr. v. David Y. Adler, et al.](#), 325 Conn 14, 155 A.3d 1223 (2017). "...the plaintiff brought this action against the defendant seeking foreclosure of his **mechanic's lien, and claiming damages for breach of contract and unjust enrichment**. The defendant raised the special defense that, because the plaintiff had failed to comply with § 20-429 [Required contract provisions of the Home Improvement Act], the agreement was **unenforceable.**" (p. 26-27)

"...the very purpose of this act is to place the burden *on the contractor* to provide written documentation, signed by both parties, for '[e]ach change in the terms and conditions of a contract...' General Statutes § 20-429(a) ('[e]ach change in the terms and conditions of a contract shall be in writing and shall be signed by the owner and contractor')...When a contractor fails to meet this burden and, as a result, a genuine, good faith dispute about the authorized scope of the work or the contract price arises, **the homeowner's refusal to pay the amounts claimed by the contractor is not in bad faith.**" (p. 36-37) [Emphasis in original.]

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- [Benedetto Izzo v. Richard Quinn et al.](#), 170 Conn. App. 631, 633, 155 A.3d 315 (2017). “...The plaintiff, acting under the name ‘Benedetto Izzo dba New Haven Drywall,’ filed a complaint with the Superior Court seeking to foreclose a mechanic’s lien that had been filed against the defendant’s property.” “...the defendant filed an answer, three special defenses and a four count counterclaim. In the special defenses, the defendant alleged: (1) he had contracted with North Haven Drywall, LLC, to restore his fire damaged residence, Benedetto Izzo had acted as the general contractor on that job, and the work was not performed in a workmanlike manner; (2) the mechanic’s lien was not filed timely; and (3) the plaintiff lacked standing to enforce the mechanic’s lien because the defendant had contracted with North Haven Drywall, LLC, not with the plaintiff.”
- [Shane Butler et al. v. Charles O’Connor et al.](#), Superior Court, Judicial District of Stamford, No. FSTCV126014644S (July 5, 2017) (64 Conn. L. Rptr. 779) (2017 WL 3470499). “The notice of lis pendens was recorded within one year of the filing of F’s mechanic’s lien. In rejecting the plaintiff’s position the court reviewed the nature and purpose of a lis pendens. The purpose of the lis pendens in the context of a mechanic’s lien is the same as it is in any other situation in which real property is the subject of litigation; namely, it is intended to give constructive notice to persons seeking to purchase or encumber property after the recording of a lien or the commencement of a foreclosure suit...O’Connor relies on the following underscored statement of the court to support his claim that as long as the Butlers had actual knowledge of the mechanic’s lien, which from the evidence they clearly did, such knowledge is a substitute for constructive notice which is created by the recording of the lis pendens...*Since the filing of notice of lis pendens is not a condition precedent to a right of action; Meyer, Kasindorf & Mancino v. Lafayette Bank & Trust Co., supra*, 34 Conn.Sup. 87; and since the plaintiff, or its predecessor, had actual notice of the action for foreclosure of the mechanic’s lien, Fairfield’s lien is not invalid to this plaintiff. The plaintiff suffered no prejudice.” *Id.* at 704. (Emphasis added.)
- [Astoria Federal Mortgage Corporation v. Genesis Limited Partnership et al.](#), 167 Conn. App. 183, 204, 143 A.3d 1121 (2016). “Specifically, on the basis of our reading of the plain language of §§ 47-10, 49-17, and 49-33(i), we conclude that the failure of an assignee of a mechanic’s lien to record an otherwise valid assignment of the lien does not deprive the assignee of the lien of standing to commence a foreclosure action.”

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Astoria Federal Mortgage Corporation v. Genesis Holdings, LLC, et al.](#), 159 Conn. App. 102, 112, 122 A. 3d 694 (2015). **“The trial court properly concluded that the doctrine of collateral estoppel was not applicable in the present case. The prior action involved a different debtor, different property, and different encumbrances. Moreover, the court in the prior case never directly addressed the issues raised in this case concerning the scope of the relief from stay granted by the Bankruptcy Court.”**
- [Ed Lally and Associates, Inc. v. DSBNC, LLC](#), 145 Conn. App. 718, 720, 78 A. 3d 148 (2013). **“On appeal, the defendants claim that the trial court (1) did not have subject matter jurisdiction to find in favor of the plaintiff on the foreclosure of its mechanic’s liens because the mechanic’s liens were invalid...”**
- [Ed Lally and Associates, Inc. v. DSBNC, LLC](#), 145 Conn. App. 718, 728-729, 78 A. 3d 148 (2013). **“The appropriate avenue to challenge the validity of a mechanic’s lien, however, is by way of a special defense...In the present case, there were no special defenses properly before the court when the trial commenced...Thus, the trial court did not consider whether the mechanic’s liens were valid.”**
- [E and M Custom Homes, LLC v. Negron](#), 140 Conn. App. 92, 109, 59 A. 3d 262 (2013). **“The plaintiff next claims that allowing an unregistered home improvement contractor to offer expert witness testimony was an abuse of discretion. It maintains that because the witness engaged in the home improvement business in Connecticut without registering with the department of consumer protection, a violation of Connecticut law, he was not qualified to be an expert witness. We disagree.”**
- [Clem Martone Construction, LLC v. DePino](#), 145 Conn. App. 316, 327, 77 A. 3d 760 (2013). **“In a foreclosure of a mechanic’s lien, a contractor is entitled to the value of the materials that it furnished or the services that it rendered in the construction of a project... The reasonable value of the materials and services can be proven by : (1) providing evidence that the contract price represents the value of the contractor’s materials and services... (2) demonstrating the contractor substantially performed such that the contract is the proper valuation of its materials and services... or (3) submitting evidence of the cost to complete the work (Citations omitted; emphasis added; internal quotation marks omitted.) E & M Custom Homes, LLC v. Negron, 140 Conn. App. 92, 104-105, 59 A. 3d 262, cert. granted on other grounds, 308 Conn. 912, 61 A. 3d 1099 (2013).**
- [Construction Ken-nection, Inc. v. Cipriano](#), 136 Conn. App. 546, 550-551, 45 A. 3d 663, (2012). **“... the plaintiff**

commenced an action to foreclose the mechanic's lien, and the court rendered judgment in favor of the Ciprianos... The [Ciprianos] raised various special defenses to the **December 14, 2006 mechanic's lien, which include: the untimely filing of the lien; that certain work and billings were beyond the written or oral agreements; and that [they] did not consent to some of the work."**

- [ProBuild East, LLC v. Poffenberger](#), 136 Conn. App. 184, 191-192, **45 A. 3d 654, (2012)**. "The statutory limitations on lienable funds as applicable to subcontractors are set forth in General Statutes §§ 49-33 and 49-36. A subcontractor is subrogated to the rights of the general contractor through whom he claims, such that a **subcontractor only can enforce a mechanic's lien to the extent that there is unpaid contract debt owed to the general contractor by the owner."**
- [Gallicchio Enterprises, LLC v. PRA Wallingford, LLC](#), Superior Court, Judicial District of Hartford, No. HHD04-CV10-6024812-S (Nov. 8, 2011) (52 Conn. L. Rptr. 867) **(2011 WL 5925096)**. "Consequently, the more reasonable interpretation of § 49-39, in light of § 49-30, is that all the lienor is required to do within one year of perfecting its lien is to commence the foreclosure action. If it does so, it can add additional defendants during the proceedings. If it does not discover an additional party until after the foreclosure is complete, it can then bring an omitted party action under § 49-30. However, if the lienor fails to commence its foreclosure action within one year, it can bring neither a foreclosure under § 49-39, nor an omitted party action under § 49-30, because the latter is premised **on a judgment having entered in the former."**
- [Haynes Material Company v. Louise Clement et al.](#), Superior Court, Judicial District of Litchfield, No. CV10-6002985 (Feb. 3, 2011) (51 Conn. L. Rptr. 373, 374) **(2011 WL 782573)**. "With respect to late service of the complaint, the plaintiff argues that it is entitled to take advantage of the 30-day grace period provided by C.G.S. § 52-593a... **§ 52-593a does not apply to actions to foreclose mechanic's liens because of the difference between a statute of limitations which merely cuts off a remedy which exists at common law, and a statute such as § 49-39 which creates a remedy for a specific period of time."**
- [Connecticut Carpenters Benefit v. Burkard Hotel](#), 83 Conn. App. 352, 353, 359, 849 A.2d 922 **(2004)**. "The principal issue in this appeal is whether an employee benefits fund **has standing to bring an action to foreclose a mechanic's lien,...**, on behalf of and for the benefit of the employees who performed the work...Accordingly, we find the

plaintiff,..., stands in the carpenters' shoes and, as such, is entitled to enforce the carpenters' rights on their behalf."

- PDS Engineering & Construction v. Double RS, 42 Conn. Sup. 460, 472 (1992), 627 A.2d 959. "Mechanic's liens are a means of securing payment to workers and suppliers who contribute services and material to improve property,...That protection is meant to be readily available and simply obtained. To require that a mechanic's lienor notify all other lienors of the filing of its certificate would necessitate a title search, the hiring of an attorney, and thus vitiate the efficacy of the mechanic's lien law."

"In the present case, given that: (1) United Bank had constructive notice of PDS' lien; (2) the impact of the filing of the certificate on United Bank was relatively small (even if not de minimus); (3) if the certificate prevented United Bank from assigning its mortgage, it could promptly obtain a hearing under §§ 49-37 and 49-51; (4) requiring United Bank to be served with the lien certificate would diminish the utility of the mechanic's lien protection, this court concludes that failing to serve United Bank with notice of the certificate filing does not constitute a denial of due process."

- Gruss v. Miskinis, 130 Conn. 367, 369, 34 A.2d 600(1943). "If the warranty and mortgage deeds had been recorded before the plaintiff commenced to furnish materials, the mortgage would have had priority over the mechanic's lien."

**WEST KEY NUMBERS:**

- Mechanics' lien  
XI. Enforcement, # 245-310

**ENCYCLOPEDIAS:**

- 53 Am Jur 2d Mechanics' Liens (2017)  
§§ 317-403. Enforcement of Liens  
§§ 317-325. Nature and form of enforcement proceedings  
§§ 326-334. Time to sue  
§§ 335-352. Parties  
§§ 353-354. Process  
§§ 355-360. Notices and conditions precedent to enforcement  
§§ 361-371. Pleadings and motions  
§§ 372-383. Evidence  
§§ 384-392. Judgment or decree  
§§ 393-397. Proceedings subsequent to judgment  
§§ 398-403. Costs and attorney's fees
- 56 C.J.S. Mechanics' Lien (2018).  
§§ 367-545. Enforcement

## **TEXTS & TREATISES:**

You can click on the links provided to see which law libraries own the title you are interested in, or visit our [catalog](#) directly to search for more treatises.

- Carol Vento, *Discharge Of Mortgage And Taking Back Of New Mortgage As Affecting Lien Intervening Between Old And New Mortgages*, 43 [ALR5th](#) 519 (1996).
- 13 David E. Rosengren, Connecticut Practice Series, [Connecticut Construction Law](#) (2005).  
Chapter 6. Mechanic's liens  
§ 6: 7. Foreclosure
- Denis R. Caron and Geoffrey K. Milne, [Connecticut Foreclosures: An Attorney's Manual of Practice and Procedure](#), 9<sup>th</sup> ed. (2019).  
Chapter 15. Mechanic's Liens  
§ 15-2. The notice of lis pendens  
§ 15-2: 1. Statutory framework  
§ 15-2: 2.2. Tactical considerations  
§ 15-4. The complaint  
§ 15-7. The trial
- Lewis K. Parker, ed., [Connecticut Lawyers' Deskbook: A Reference Manual](#), 3d ed. (2008).  
*Mechanics' Liens* by Alan Robert Baker, Gina M. Varano, and Anthony R. Minchella  
What is the priority of a mechanic's lien in foreclosure?
- Patrick J. Rohan and Melvin A. Reskin, [Condominium Law and Practice](#), LexisNexis, 2015.  
Volume 1, Part 3, Chapter 45. Administration of condominium associations  
§ 45.13. Lienholders' priorities  
[3]. Mechanics' liens
- Christian R. Hoheb, ed., [A Practical Guide to Residential Real Estate Transactions and Foreclosures in Connecticut](#) (2011).  
§ 4.9.5 on statutes of limitation affecting interests in real estate
- Denis R. Caron, *Bass Closes Door on Mechanic's Lien/Lis Pendens Debate - Or Does It*, [Connecticut Lawyer](#), Vol. 2, Issue 7 (April 1992), pp. 6-7.
- Elizabeth C. Yen, *Constitutionality of Mechanic's Liens Questioned*, [Connecticut Lawyer](#), Vol. 2, Issue 5 (February 1992), pp. 6-7.

## **LAW REVIEWS:**

Public access to law review databases is available on-site at each of our [law libraries](#).

## Glossary of Terms

**Automatic Extinguishment of Mechanic's Lien:** "Any mechanic's lien which has expired because of failure to comply with the time limitations of section 49-39 is automatically extinguished and the continued existence of the lien unreleased of record in no way affects the record owner's title nor the marketability of the same." Conn. Gen. Stat. [§ 49-40a](#) (2019).

**Certificate of Mechanic's Lien:** "A mechanic's lien is not valid unless the person performing the services or furnishing the materials (1) within ninety days after he has ceased to do so, lodges with the town clerk of the town in which the building, lot or plot of land is situated a certificate in writing, which shall be recorded by the town clerk with deeds of land, (A) describing the premises, the amount claimed as a lien thereon, the name or names of the person against whom the lien is being filed and the date of the commencement of the performance of services or furnishing of materials, (B) stating that the amount claimed is justly due, as nearly as the same can be ascertained, and (C) subscribed and sworn to by the claimant, and (2) not later than thirty days after lodging the certificate, serves a true and attested copy of the certificate upon the owner of the building, lot or plot of land in the same manner as is provided for the service of the notice in section 49-35." Conn. Gen. Stat. [§ 49-34](#) (2019).

**Claim:** "The claim is a lien on the land, building and appurtenances or lot or in the event that the materials were furnished or services were rendered in the site development or subdivision of any plot of land, then on the plot of land and the claim takes precedence over any other encumbrance originating after the commencement of the services, or the furnishing of any such materials, subject to apportionment as provided in section 49-36." Conn. Gen. Stat. [§ 49-33](#)(b) (2019).

**Discharge or Reduction:** "(a) Whenever one or more mechanics' liens are placed upon any real estate pursuant to sections 49-33, 49-34, 49-35 and 49-38, the owner of the real estate, if no action to foreclose the lien is then pending before any court, may make application, together with a proposed order and summons, to the superior court for the judicial district in which the lien may be foreclosed under the provisions of section 51-345, or to any judge thereof, that a hearing or hearings be held to determine whether the lien or liens should be discharged or reduced. The court or judge shall thereupon order reasonable notice of the application to be given to the lienor or lienors named therein and, if the application is not made by all owners of the real estate as may appear of record, shall order reasonable notice of the application to be given to all other such owners, and shall set a date or dates for the hearing or hearings to be held thereon. If the lienor or lienors or any owner entitled to notice is not a resident of this state, the notice shall be given by personal service, registered or certified mail, publication or such other method as the court or judge shall direct. At least four days' notice shall be given to the lienor, lienors or owners entitled to notice prior to the date of the hearing." Conn. Gen. Stat. [§ 49-35a](#) (2019).

**Foreclosure:** "Any mechanic's lien may be foreclosed in the same manner as a mortgage." Conn. Gen. Stat. [§ 49-33](#)(i) (2019).

**Leasehold Interest:** "If any person has a claim for more than ten dollars for materials furnished or services rendered in the construction, raising, removal or repairs of any real property, and the claim is by virtue of an agreement with or by

consent of the lessee of such real property or of some person having authority from or rightfully acting for such lessee in procuring the materials or labor, then the leasehold interest in such real property is subject to the payment of the claim. This subsection shall not be construed to limit any of the rights or remedies available to such person under subsection (a) of this section." Conn. Gen. Stat. [§ 49-33](#)(h) (2019).

**Mechanic's Lien:** "If any person has a claim for more than ten dollars for materials furnished or services rendered in the construction, raising, removal or repairs of any building or any of its appurtenances or in the improvement of any lot or in the site development or subdivision of any plot of land, and the claim is by virtue of an agreement with or by consent of the owner of the land upon which the building is being erected or has been erected or has been moved, or by consent of the owner of the lot being improved or by consent of the owner of the plot of land being improved or subdivided, or of some person having authority from or rightfully acting for the owner in procuring the labor or materials, the building, with the land on which it stands or the lot or in the event that the materials were furnished or services were rendered in the site development or subdivision of any plot of land, then the plot of land, is subject to the payment of the claim." Conn. Gen. Stat. [§ 49-33](#)(a) (2019).

**Notice Of Intent:** "(a) No person other than the original contractor for the construction, raising, removal or repairing of the building, or the development of any lot, or the site development or subdivision of any plot of land or a subcontractor whose contract with the original contractor is in writing and has been assented to in writing by the other party to the original contract, is entitled to claim any such mechanic's lien, unless, after commencing, and not later than ninety days after ceasing, to furnish materials or render services for such construction, raising, removal or repairing, such person gives written notice to the owner of the building, lot or plot of land and to the original contractor that he or she has furnished or commenced to furnish materials, or rendered or commenced to render services, and intends to claim a lien therefor on the building, lot or plot of land; provided an original contractor shall not be entitled to such notice, unless, not later than fifteen days after commencing the construction, raising, removal or repairing of the building, or the development of any lot, or the site development or subdivision of any plot of land, such original contractor lodges with the town clerk of the town in which the building, lot or plot of land is situated an affidavit in writing, which shall be recorded by the town clerk with deeds of land, (1) stating the name under which such original contractor conducts business, (2) stating the original contractor's business address, and (3) describing the building, lot or plot of land. The right of any person to claim a lien under this section shall not be affected by the failure of such affidavit to conform to the requirements of this section. The notice shall be served upon the owner or original contractor, if such owner or original contractor resides in the same town in which the building is being erected, raised, removed or repaired or the lot is being improved, or the plot of land is being improved or subdivided, by any indifferent person, state marshal or other proper officer, by leaving with such owner or original contractor or at such owner's or the original contractor's usual place of abode a true and attested copy thereof. If the owner or original contractor does not reside in such town, but has a known agent therein, the notice may be so served upon the agent, otherwise it may be served by any indifferent person, state marshal or other proper officer, by mailing a true and attested copy of the notice by registered or certified mail to the owner or original contractor at the place where such owner or the original contractor resides. If such copy is returned unclaimed, notice to such owner or original contractor shall be given by publication in accordance with the provisions of section 1-2. When there are two or



more owners, or two or more original contractors, the notice shall be so served on each owner and on each original contractor. The notice, with the return of the person who served it endorsed thereon, shall be returned to the original maker of the notice not later than thirty days after the filing of the certificate pursuant to section 49-34." Conn. Gen. Stat. [§ 49-35](#)(a) (2019).

**Priorities in Mechanic's Liens:**

- "If any such liens exist in favor of two or more persons for materials furnished or services rendered in connection with the same construction, raising, removal or repairs of any building or any of its appurtenances, or in the improvement of any lot, or in the site development or subdivision of any plot of land, no one of those persons shall have any priority over another except as hereinafter provided." Conn. Gen. Stat. [§ 49-33](#)(c) (2019).
- "If any instrument constituting a valid encumbrance upon such land other than a mechanic's lien is filed for record while the building is being constructed, raised, removed or repaired, or the lot is being improved, or the plot of land is being improved or subdivided, all such mechanic's liens originating prior to the filing of that instrument for record take precedence over that encumbrance and no such mechanic's lien shall have priority over any other such mechanic's lien. That encumbrance and all such mechanic's liens shall take precedence over any mechanic's lien which originates for materials furnished or services rendered after the filing of that instrument for record, but no one of the mechanic's liens originating after the filing of that instrument for record has precedence over another. If any lienor waives or releases his lien or claim of precedence to any such encumbrance, that lien shall be classed with and have no priority over liens originating subsequent to that encumbrance." Conn. Gen. Stat. [§ 49-33](#)(d) (2019).
- "If the warranty and mortgage deeds had been recorded before the plaintiff commenced to furnish materials, the mortgage would have had priority over the mechanic's lien." Gruss v. Miskinis, 130 Conn. 367, 369, 34 A.2d 600 (1943).
- ". . . the claim takes precedence over any other encumbrance originating after the commencement of the services, or the furnishing of any such materials, subject to apportionment as provided in section 49-36." Conn. Gen. Stat. [§ 49-33](#)(b) (2019).

**Privileged Action:**

- An action to foreclose a mechanic's lien shall be privileged in respect to assignment for trial. Conn. Gen. Stat. [§ 49-33](#)(b) (2019).
- An action to foreclose a mechanic's lien shall be privileged in respect to assignment for trial. Conn. Gen. Stat. [§ 49-39](#) (2019).

**Removal of Building:** "In the case of the removal of any building, no such mechanic's lien shall take precedence over any encumbrance upon the land to which such building has been removed which accrued before the building was removed upon the land." Conn. Gen. Stat. [§ 49-33](#)(g) (2019).

**Subcontractors:**

- "A mechanic's lien shall not attach to any such building or its appurtenances or to the land on which the same stands or to any lot or to any plot of land, in favor of

any subcontractor to a greater extent in the whole than the amount which the owner has agreed to pay to any person through whom the subcontractor claims subject to the provisions of section 49-36." Conn. Gen. Stat. [§ 49-33](#)(e) (2019).

- "Any such subcontractor shall be subrogated to the rights of the person through whom the subcontractor claims, except that the subcontractor shall have a mechanic's lien or right to claim a mechanic's lien in the event of any default by that person subject to the provisions of sections 49-34, 49-35 and 49-36, provided the total of such lien or liens shall not attach to any building or its appurtenances, or to the land on which the same stands or to any lot or to any plot of land, to a greater amount in the whole than the amount by which the contract price between the owner and the person through whom the subcontractor claims exceeds the reasonable cost, either estimated or actual, as the case may be, of satisfactory completion of the contract plus any damages resulting from such default for which that person might be held liable to the owner and all bona fide payments, as defined in section 49-36, made by the owner before receiving **notice of such lien or liens.**" Conn. Gen. Stat. [§ 49-33](#)(f) (2019).
- See Also: Notice of Intent, above.

**Subrogation:** "Under Connecticut law, a subcontractor's right to enforce a mechanic's lien against a property owner is based on the doctrine of subrogation . . . . The theory of subrogation allows the plaintiff to recover only to the extent the general contractor could recover from the defendants." [W. G. Glenney Co. v. Bianco](#), 27 Conn. App. 199, 201, 604 A.2d 1345 (1992).

**Time Limitations on Mechanic's Lien:** "A mechanic's lien shall not continue in force for a longer period than one year after the lien has been perfected, unless the party claiming the lien commences an action to foreclose it, by complaint, cross-complaint or counterclaim, and records a notice of lis pendens in evidence thereof on the land records of the town in which the lien is recorded within one year from the date the lien was recorded or within sixty days of any final disposition of an application made pursuant to section 49-35a, including any appeal taken with respect thereto in accordance with section 49-35c, whichever is later. Each such lien, after the expiration of the one-year period or sixty-day period, as the case may be, without action commenced and notice thereof filed as aforesaid, shall be invalid and discharged as a matter of law . . . . With respect to any such lien which was validated in accordance with the provisions of section 49-37a, the one-year period or sixty-day period, as the case may be, shall toll from the date of the validation." Conn. Gen. Stat. [§ 49-39](#) (2019).