

Challenging a mechanic's lien in Suffolk County

A mechanic's lien sometimes sounds frightening to a home owner unfamiliar with what a mechanic's lien really is and what it really does. Don't misunderstand; if you owe a contractor money and you do not pay, a mechanic's lien can result in the forcible sale of your home to pay the contractor. That being said, there are a few things that Suffolk County homeowners can do to challenge a mechanic's that they feel has been wrongly filed against their property:

Pay the Lien

This seems obvious but should not be overlooked. Paying doesn't necessarily mean paying in full. An often-underrated way to resolve a lien is to pick up the phone, call the contractor and settle the claim. If a lien has been filed against your Suffolk County property you should **never** pay it without getting a lien satisfaction and final lien waiver from the contractor that filed the lien.

Bond the Lien

This is a popular option for home owners that want to remove the lien from their property but do not want to (or are unable to) settle with the contractor. A mechanic's lien discharge bond will get filed with the Suffolk County Clerk and will remove the lien from title. The property is then freely marketable and can be transferred without concern for the lien. The bond will also remove the lien from the property so that it is not a hindrance to refinancing.

A lien discharge bond, by statute, must be posted for 110% of the face value of the lien. There are a few additional costs like paying the bond premium to the surety that issues the bond (usually 2-3% of the bond value) and some attorneys' fees associated with preparing and filing the bond. The bond collateral (the 110%) is returned to the homeowner if the lien expires, is released or is otherwise defeated in court.

File a "Facial Defect" Challenge

A "facial defect" in a mechanic's lien means that there is something wrong with the lien on its face that makes the lien defective. A dispute over whether money is owed is **not** a facial defect. While individual Suffolk County homeowners can file this petition in the courts themselves, it is not recommended because a special proceeding to discharge a mechanic's lien relies on often very technical procedural deficiencies that lends itself to requiring a lawyer's help. Common facial defects are incorrect names of the owners, incorrect names of the lienors, incorrect address or insufficient or incorrect address for the lienor or owners (among many others).

Demand Foreclosure of the Lien

This one sounds kind of counterproductive. The homeowner is already suffering from a lien filed against his or her home that he or she believes was improper. Why would that homeowner then ask the lienor/contractor to foreclose on the lien? There are three basic answers. First, if you dispute the amount of the lien you can only raise that issue in a foreclosure action. So, if you want to challenge whether you owe your contractor money, you must demand that the contractor foreclose on its mechanic's lien. Second, it forces the contractor/lienor to act quickly. Normally, a mechanic's lien lasts for a year. For a single family dwelling it can be extended after the first year but only with a Court order. To short circuit that time period, you can demand foreclosure. Once the demand is (properly) served, the contractor that filed the lien must foreclose within thirty (30) days. If the foreclosure action is not commenced, you can file a petition to discharge the mechanic's lien for not timely foreclosing after thirty (30) days. Third, if you believe that the lien was greatly exaggerated and you want to make the contractor "pay" for the damage they have caused you, then you need the contractor to foreclose on the lien so that you can raise the defense of exaggeration. Under Lien Law Sections 39 and 39-a, the exaggeration defense and counterclaim may only be raised in a foreclosure action.

Like the special proceeding to challenge a facial defect, a demand to foreclose (and a subsequent petition to challenge the lien) is highly technical in nature and requires specific legal knowledge – especially of the Lien Law. Accordingly, it is strongly recommended that you retain legal counsel to handle the lien foreclosure demand.

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