

Enrolled
House Bill 2349

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CHAPTER

AN ACT

Relating to value given for release of lien; creating new provisions; and amending ORS 87.076, 87.083 and 87.088.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 87.076 is amended to read:

87.076. (1) The owner of an improvement or land against which a lien perfected under ORS 87.035 is claimed, or *[any other]* **an** interested person, may file with the recording officer of the county in whose office the claim of lien is filed a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the principal or principals on the bond shall pay the amount of the claim and all costs and attorney fees that are awarded against the improvement or land on account of the lien. The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, or in the amount of \$1,000, whichever is greater.

(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, the owner of an improvement or land against which a lien perfected under ORS 87.035 is claimed, or *[any other]* **an** interested person, may deposit with the treasurer of the county in which the claim of lien is filed a sum of money or *[its]* **the** equivalent **of money** equal in value to 150 percent of the amount claimed under the lien, or in the amount of \$1,000, whichever is greater.

(b) *[The court in which any proceeding to foreclose the lien may be brought may, upon notice and upon motion by a person who makes a deposit under paragraph (a) of this subsection, order the money invested in such manner as the court may direct.]* A person who makes a deposit under paragraph (a) of this subsection *[shall be]* **is** entitled to any **investment** income. *[from the investments and the treasurer of the county shall pay the income when received to the depositor without order.]* **The treasurer shall pay the investment income to the person who makes the deposit at the time the treasurer, in accordance with ORS 87.083, distributes the money deposited under this subsection. The person who makes the deposit bears the risk for a loss that results from an investment of the money deposited.**

(3) A **person may file a bond or deposit** money *[may be filed or deposited]* under subsection (1) or (2) of this section at any time after the *[filing of the]* claim of lien **is filed** under ORS 87.035.

(4)(a) *[Any]* **A** person entitled to post a bond under subsection (1) of this section or a cash deposit under subsection (2) of this section may deliver pursuant to ORS 87.018 a written demand **to the lien claimant** that a lien perfected under ORS 87.035 be released and a notice that if *[it]* **the lien** is not released the *[party making the demand may be entitled to]* **person may** recover the actual costs **the person** incurred *[by the party making the demand]* in complying with this section[,] **and** ORS 87.078 and 87.081 or the sum of \$500, whichever is greater. If the lien is not released within

10 days after [*delivery of*] the demand and notice **is delivered** and the lien claimant or an assignor of the lien claimant does not bring a suit to foreclose the lien within the time provided in ORS 87.055, and if the person [*making*] **who made** the demand has complied with this section[,] **and** ORS 87.078 and 87.081, then the [*person failing*] **lien claimant or assignor of the lien claimant who fails** to release [*and*] **or** foreclose the lien [*shall be*] **is** liable to the person [*making the demand*] for the actual costs [*incurred by*] the person [*making the demand*] **incurred** in complying with this section[,] **and** ORS 87.078 and 87.081 or the sum of \$500, whichever is greater, in addition to any other remedy provided by law or equity.

(b) In [*any*] **an** action to recover damages under this subsection in which the plaintiff prevails, [*there shall be allowed to the plaintiff;*] **the court**, at trial and on appeal, **shall allow and fix** a reasonable amount for attorney fees [*to be fixed by the court*] for prosecution of the action, if the court finds that a written demand for payment of the claim was made on the defendant not less than 20 days before commencement of the action. However, **the court may not allow** attorney fees [*shall not be allowed*] to the plaintiff, but shall [*be allowed*] **allow attorney fees** to the defendant, if the court finds that the defendant tendered to the plaintiff prior to commencement of the action an amount not less than the damages awarded to the plaintiff.

(c) If a lien claimant or an assignor of the lien claimant is served with a demand under paragraph (a) of this subsection and is a prevailing party in the suit to foreclose the lien, then in addition to [*such*] other costs and attorney fees to which the lien claimant or the assignor of the lien claimant is entitled, the court shall allow the actual costs incurred in addressing the demand or the sum of \$500, whichever is greater.

SECTION 2. ORS 87.083 is amended to read:

87.083. (1) [*Any*] **A** suit to foreclose a lien pursuant to ORS 87.060 that is commenced or pending after [*the filing of*] a bond **is filed** or [*deposit of*] money **deposited** under ORS 87.076 shall proceed as if no filing or deposit [*had been*] **was** made except that the lien shall attach to the bond or money upon the filing or deposit and the service of notice thereof upon the lien claimant. The property described in the claim of lien [*shall*] **is** thereafter [*be*] entirely free of the lien and [*shall in no way be*] **is not** involved in subsequent proceedings.

(2) The county or an officer or employee of the county may not be named or otherwise made a party to a suit described in subsection (1) of this section.

[*2*] **(3)** When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court allows the lien, the lien [*shall*] **must** be satisfied out of the bond or money. The court shall include as part of [*its*] **the court's** judgment an order [*for the return to the person who deposited the money of any amount remaining after the lien is satisfied.*] **that specifies the amount the treasurer must release to the judgment creditor and the amount of the remaining balance that the treasurer must release to the person who deposited the money.**

[*3*] **(4)** When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court disallows the lien, the court shall include as part of [*its*] **the court's** judgment an order [*for the*] **to** return [*of*] the bond or money to the person who filed the bond or deposited the money.

(5) Notwithstanding an order from the court under subsection (3) or (4) of this section or an order or notice under ORS 87.088, if the county treasurer is not certain about how to distribute money deposited under ORS 87.076, the treasurer shall notify the lien claimant and the person who deposited the money of how the treasurer intends to distribute the money. If within 10 days after the date of the treasurer's notice a party to the suit to foreclose the lien objects to the notice, the treasurer may:

(a) Hold the money until the court or a stipulation of the parties provides further direction; or

(b) Commence an interpleader proceeding under ORCP 31.

SECTION 3. ORS 87.088 is amended to read:

87.088. The county recording officer shall record a written release of the lien or the county treasurer in whose office money is deposited under ORS 87.076 shall return the money to the person who made the deposit *[when]* if:

(1) **The person who filed the bond or deposited the money under ORS 87.076 notifies the lien claimant and the treasurer in writing and by certified mail that a suit to foreclose the lien *[is]* was not commenced within the time specified by ORS 87.055[;]. The notice shall provide that the lien claimant has 15 calendar days in which to object to the release of the lien and the return of the money and to provide documentation that demonstrates that a suit was timely commenced or that the time for commencement has not expired. If the treasurer receives an objection, the treasurer may decide how to distribute the money or may commence an interpleader proceeding under ORCP 31.**

(2) The person who *[recorded]* filed the bond or deposited the money presents a certified copy of a court's order for the release of the bond or all or some of the money to *[that]* the person;
or].

(3) The person who *[recorded]* filed the bond or deposited the money presents a written release of lien signed by the lien claimant.

SECTION 4. Section 5 of this 2009 Act is added to and made a part of ORS 87.075 to 87.093.

SECTION 5. The provisions of ORS 87.076, 87.083 and 87.088 do not create a cause of action and may not be asserted as a basis for a per se negligence action.

SECTION 6. Section 5 of this 2009 Act and the amendments to ORS 87.076, 87.083 and 87.088 by sections 1 to 3 of this 2009 Act apply to a surety bond or money that is filed or deposited in connection with a demand for a release of a perfected lien on or after the effective date of this 2009 Act.

Passed by House April 22, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 29, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State