

## Bond Principal Necessary on a Mechanic's Lien Claim



As anyone that reads my construction law blog knows, [mechanic's liens](#) are a big part of the Virginia landscape for a [construction attorney](#) like me.

One option for dealing with a mechanic's lien here in Virginia that we have not discussed but so often is the ability to "bond off" a lien. In short, the Virginia statute allows a party to essentially substitute a bond valued at a court set multiple of the principal amount of the mechanic's lien for the memorandum. In exchange, the lien is released of record. Any enforcement action can still proceed with security for the claimant and the property owner feeling better about things because there will be no lien on the title to the land.

In many ways this process provides an easier path to resolution for both owner and claimant. First of all, the claimant does not have to deal with a bank or other interest holders in the property (though a recent case discussed below reminds us that certain other parties are necessary). Second of all, the owner does not have the cloud on the title of a mechanic's lien that may have been filed by a subcontractor over which he has no control.

While this process can be easier, a recent Fairfax, VA Circuit Court opinion reminds us that event this process requires some careful thought. In [Johnson Controls Inc. v. Norair Eng'g Corp.](#), the Court considered a situation in which a supplier named a subcontractor in the original suit to enforce a mechanic's lien but *failed to name that same subcontractor (and principal on the bond) in the later suit on the substituted bond.*

After discussing the due process and other concerns that accompany a mechanic's lien enforcement suit and lead to one set of necessary parties (Trustees on Deed of Trust, Property Owner, etc.), the Court then considered who is necessary when that lien has been "bonded off." After looking at the facts of the case in which the claimant named the surety, but not the principal on the bond, the Court concluded that the suit must be dismissed because the principal on a substituted bond must be named in the suit claiming against that bond. Because the statute of limitations had run, the supplier, Johnson Controls, lost its claim against the bond.

In short, just because a bond is there does not mean that you do not need to carefully consider what parties are necessary.

I recommend reading the above mentioned case and will post a link when it's available.

**UPDATE:** Tom Powell, one of the lawyers on this case was nice enough to send me the actual letter opinion. I've linked it above.

Photo Credit via [Wikipedia](#).

*Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.*