

# SENATE NO. 1859

## **AN ACT** RELATIVE TO NOTICE OF CONTRACT; IDENTIFICATION OF PROPERTY OWNERS

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. Said chapter 254 is hereby amended by striking out section 12 and inserting in place  
2 thereof the following section:-

3 Section 12. Any person, including the owner, in interest in connection with a written contract covered  
4 by section two or section four may cause to be recorded in the registry of deeds in the county or  
5 district where the land lies a bond of a surety company authorized to do a surety business in  
6 Massachusetts and in a penal sum equal to the contract sum or, if the contract does not contain a  
7 contract sum, in a penal sum equal to that person's fair estimate of the contract sum, all as set forth in  
8 the certificate on the bond. The bond shall name the owner of the land or other interest in real property  
9 which is the subject of such contract and shall describe the land or other interest in such detail as is  
10 required in a common conveyance of land, and shall be in the following form:-

11 Know All Men By These Presents:

12 That we .... of .... in the County of .... and Commonwealth of Massachusetts, as principal, and .... a  
13 surety company organized under the laws of .... and authorized to do business in the Commonwealth  
14 as a surety company, are holden and stand firmly bound and obliged unto.... Register of Deeds for the  
15 .... District, County of...., in the principal sum of .... Dollars ( \$ ) to be paid unto said Register and his  
16 successors in said office, to which payment, well and truly to be made, we bind ourselves, our heirs,  
17 executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

18 Whereas, said principal is interested in the erection, alteration, repair or removal of a building,  
19 structure or other improvement on a certain lot of land situated within the .... Registry District in the  
20 Commonwealth, for ..... as owner of the land or other interest in real property, bounded and described  
21 as follows:

22 (Insert description)

23 and desires to free said land from liens for all labor and all labor and materials entitled to lien  
24 protection under chapter 254 and amendments thereto;

25 NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay for all labor  
26 and for all labor and materials entitled to lien protection under chapter 254 and amendments thereto  
27 under the contract referred to in the Certificate in this bond, irrespective of any agreement made  
28 between him and the owner or any other persons now interested or who may hereinafter be interested  
29 therein, then the above written obligation shall be null and void, otherwise to remain in full force and  
30 effect.

31 This bond is made for the use and benefit of all persons entitled to file the documents for lien  
32 protection as provided in Massachusetts General Laws, chapter 254 and they and each of them are

33 hereby made Obligees hereunder, and in case of the failure of the principal to carry out the provisions  
34 of this bond made for their use and benefit they and each of them may sue hereon in their own name.

35 Signed, sealed and delivered this .... day of ....., (insert year).

36 ... Principal

37 By...

38 ... Surety

39 By...

40 Certificate

41 ..., principal on the above bond, hereby certify that the (estimated) contract price for the proposed  
42 work to be performed on the land described in the above bond under a written contract between .... and  
43 .... dated ....., ....., (insert year), is .... Dollars (\$).

44 ... (Signed)

45 After the recording of any such bond no lien under this chapter shall thereafter attach in favor of any  
46 person entitled to the benefit of such bond and not named as a principal thereon for labor or for labor  
47 and materials performed under the contract in respect to which such bond is given. The register of  
48 deeds shall refuse to record the said bond if it be defective in form or substance, but no party to any  
49 such bond shall be discharged by any defect therein as against any party who has in good faith allowed  
50 his lien to be dissolved by lapse of time in reliance on the bond. The bond may be enforced by a civil  
51 action in the superior court or district court brought by any party in interest. An attested copy of the

52 complaint shall be filed and recorded in the registry of deeds. No suit or action on the bond shall be  
53 commenced after the expiration of ninety days after the claimant filed the statement required by  
54 section 8. Such bond shall not create any rights which the claimant would not have had, or impair any  
55 defense which the obligors would have had, in an action to enforce a lien.

56 SECTION 2. Said chapter 254 is hereby further amended by striking out section 14 and inserting in  
57 place thereof the following section:-Section 14. Any person in interest may dissolve a lien under this  
58 chapter by recording or causing to be recorded in the registry of deeds in the county or district where  
59 the land lies, a bond of a surety company authorized to do business in Massachusetts and in a penal  
60 sum equal to the amount of the lien sought to be dissolved conditioned for the payment of any sum  
61 which the claimant may recover on his claim for labor or labor and materials. Upon the recording of  
62 the bond, the lien shall be dissolved. Notice of the recording shall be given to the claimant by serving  
63 on the claimant a copy of the notice of recording together with a copy of the bond by an officer  
64 qualified to serve civil process or by delivering the same to the claimant. The claimant may enforce the  
65 bond by a civil action commenced within ninety days after the later of the filing of the statement  
66 required by section 8 or receipt of notice of recording of the bond, but such bond shall not create any  
67 rights which the claimant would not have had, or impair any defense which the obligors would have  
68 had, in an action to enforce a lien. Upon the recording of the bond the register shall make note of it on  
69 the notice of contract by marginal reference.

70 The bond shall be in the following form:

71 Know All Men By These Presents:

72 That we, \_\_\_\_\_ as principal and \_\_\_\_\_ duly organized to transact business as a surety  
73 within the Commonwealth of Massachusetts, as surety, are holden and stand firmly bound and obliged  
74 unto \_\_\_\_\_ in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), to the payment of which  
75 we bind ourselves, our heirs, successors and assigns, jointly and severally by these presents.

76 Whereas, under date of \_\_\_\_\_, the said obligee recorded a notice of contract in the registry of  
77 deeds, as Instrument # \_\_\_\_\_, in Book \_\_\_\_\_

78 at Page \_\_\_\_\_ upon premises more fully described in said notice, and

79 Whereas, the principal desires to dissolve said lien in accordance with the provisions of section  
80 fourteen of chapter two hundred and fifty-four of the General Laws.

81 Now, therefore, the condition of this obligation is such that if the said principal shall pay to the said  
82 obligee all sums which shall be adjudged in favor of the said obligee in an action brought under the  
83 provisions of said section fourteen, this obligation shall be void, otherwise to remain in full force and  
84 effect.

85 In witness whereof, the aforesaid principal and surety have executed this instrument under seal this  
86 \_\_\_\_\_ day of \_\_\_\_\_ (insert year).

87 Principal \_\_\_\_\_ by \_\_\_\_\_

88 Surety by \_\_\_\_\_.