

FORM 23
FINANCIAL GUARANTEE BOND UNDER SUBSECTION 78 (10) OF THE ACT

Construction Lien Act

The surety of this bond is _____, an insurer licensed under the *Insurance Act* to write surety and fidelity insurance.

The principal of this bond is _____, a mortgagee of the interest of the owner _____ in the premises described in Schedule A to this bond.

The obligees of this bond are all persons having liens whose liens are entitled to priority over the interest of the principal under subsection 78 (2) or (5) of the Act.

WHEREAS it is the intention of the principal to sell the interest of the owner under a power of sale.

THEREFORE, subject to the conditions contained in this bond, the surety and the principal bind themselves, their heirs, estate trustees, successors and assigns, jointly and severally to the obligees as follows:

1. The principal shall, on or before the date set out in the judgment or report for payment, pay to each obligee who has proved a lien the amount determined by the court to be owing to that obligee under subsection 78 (2) or (5) of the Act by the principal as a mortgagee, unless in the meantime an appeal has been taken from the judgment or report in which case payment is not required until the final disposition of all appeals.
2. The surety, in default of payment by the principal, shall pay to each obligee the amount owing to him by the principal, but the surety is not liable to pay more than a total maximum amount of \$ _____ (an amount equal to 20 per cent of the amount stated to be the contract price in the affidavit attached as Schedule B to this bond).

The bond is subject to the following conditions:

1. An obligee shall not make a claim against the surety unless the principal is in default of the principal's obligations under this bond.
2. An obligee shall give the surety thirty days written notice of the claim prior to commencing an action against the surety.
3. The surety is released from its obligation to an obligee unless the obligee has given written notice of the claim to the surety within one year after the default by the principal.
4. The total amount of this bond is reduced by and to the extent of any payment made under the bond.
5. The surety is entitled to an assignment of the rights of an obligee against the principal to the extent of the payment made by the surety.

Signed and sealed by the principal and the surety on the _____ day of _____, 20 _____ and registration of this bond on the title to the premises constitutes delivery of this bond to each obligee.

SIGNED AND SEALED

in the presence of: _____ (principal) (seal)

in the presence of: _____ (surety) (seal)

NOTE: Where the principal is not a corporation, the principal's signature must be verified by an affidavit of a subscribing witness.

SCHEDULE A

FINANCIAL GUARANTEE BOND

(provide a description of the premises sufficient for registration under the *Land Titles Act* or *Registry Act*, as the case may be)

SCHEDULE B

FINANCIAL GUARANTEE BOND
AFFIDAVIT OF GOOD FAITH BY MORTGAGEE

I, _____, make oath and say (or affirm) as follows:

1. I am a mortgagee of the interest of _____ described in Schedule A to the attached bond.
(name of owner)
2. Under the terms of the mortgage, or under the *Mortgages Act*, I am entitled to exercise a power of sale with respect to that interest.
3. It is my intention to exercise that power of sale, even though there are claims for lien registered against the interest of the owner under the *Construction Lien Act* that may have priority to the mortgage under the Act.
4. I have inquired of the contractor and the owner with respect to the contract price of the contract to which that improvement relates, and to the best of my information and belief the amount of the contract price (including the price of all services and materials supplied under all amendments to that contract) is \$ _____.
5. The attached bond has been obtained by me in good faith, without any intention of depriving any lien claimant of their rights under the *Construction Lien Act*.

Sworn (or affirmed) before me at the

_____ of _____
in the _____ of _____
this _____ day of _____, 20 _____

(deponent)

A Commissioner, etc.