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# LIEN AND BOND LAW USE IT OR LOSE IT

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**LIEN AND BOND LAW**  
**USE IT OR LOSE IT**

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# **LIEN AND BOND LAW**

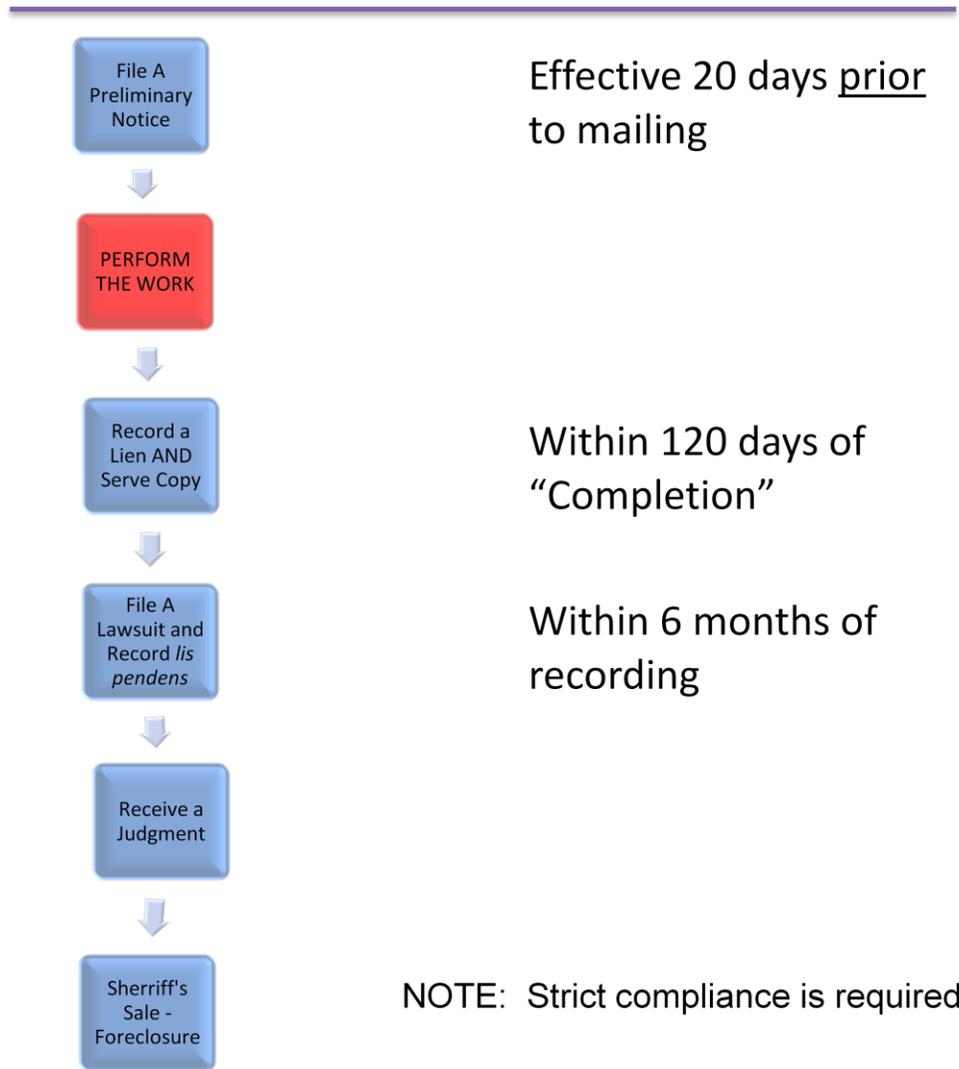
**Use It or Lose It**

## **PART I:**

## **LIENS**

# LIENS

To successfully file a lien, you must complete the following steps:



**ARIZONA  
MECHANICS' AND MATERIALMEN'S LIENS  
AND  
BOND CLAIMS**

This review of Arizona law covering mechanic's and materialmen's liens, stop notices and bond claims is designed to help you understand your contract rights. Nothing contained herein shall be construed as legal advice and the contents of this booklet are for information purposes only. Each set of facts is unique, and new court interpretations and changes in the law require that competent legal advice be retained in order to protect your rights in any given situation.

**PART I: LIENS**

Overview

When a contractor or supplier is not paid on a private project, the unpaid contractor or supplier may sue for breach of contract. If the suit is successful, the court issues a judgment against the losing party. The legislature provides an additional right to record a mechanics' or materialmen's lien, (or "encumbrance") on the real property on which the Project was built. If the lien procedures outlined below are followed and there is sufficient value in the real property and improvements after all prior recorded liens are deducted, the real property and improvements will be subject to a foreclosure sale and the net proceeds paid to the lien claimants.

**NOTE:** The following lien procedures must be *strictly* followed. This is not horseshoes. Close is not good enough. You may lose all rights to a lien if you do not follow the statutory requirements.

**1. How to Enforce a Lien:**

- a. *Timely* serve preliminary notice on the owner of the property, the general contractor, the lender, and the party with whom you have a contract. If the contract increases by more than 20%, you must amend the preliminary notice for the increased amount and send to everyone again.
- b. *Timely* prepare and record the lien in the County Recorder's office, and serve a copy on the owner of the property.
- c. *Timely* file a lawsuit against the owner, and *timely* record a lis pendens (notice of the lawsuit) within five (5) days of filing the lawsuit.
- d. Obtain a Court Judgment against the owner.
- e. Foreclose on the owner's real property.

## 2. Who Can Have a Lien?

a. The law says:

- i. "Except as provided in §33-1002 and 33-1003, every person who labors or furnishes professional services, materials, machinery, fixtures, or tools in the construction, alteration or repair of any building or other structure or improvement, shall have a lien on such building, structure, or improvement for the work or labor done or professional services, materials, machinery, fixtures, or tools furnished, whether the work was done or articles furnished at the instance of the *owner* of the building, structure, or improvement, *or his agent.*" (A.R.S. § 33-981 (A))
- ii. "*Every contractor, subcontractor, architect, builder* or other person having charge or control of the construction, alteration or repair, either wholly or in part, of any building, structure or improvement *is the agent of the owner* ... and the *owner* shall be liable for the reasonable value of labor or materials furnished *to his agent.*" (A.R.S. § 33-981 (B))

b. Who cannot get a lien?

- i. ("A person who is required to be licensed as a contractor but who does not hold a valid license as such contractor issued pursuant to title 32, chapter 10 (A.R.S. § 32-1101) shall not have the lien rights provided for in this section." (A.R.S. § 33-981 (C))
- ii. "A person who furnished professional services but who does not hold a valid certificate of registration issued pursuant to title 32, chapter 1, shall not have the lien rights provided for in this section." (A.R.S. § 33-981 (E))

c. However, this exception is provided:

A person who furnishes professional services (architect, engineer, contractor) has lien rights *only if there is an agreement with the owner of the property, or with an architect, engineer, or contractor who has an agreement with the owner. The statute does not require that the agreement be in writing.* (A.R.S. § 33-981 (F))

## 3. Must a Preliminary 20-day Notice Be Sent to the Owner? Yes: To Owner, Lender, General Contractor and your contractor.

"Except for persons performing actual labor for wages, every person . . . shall, as a necessary prerequisite to the validity of any claim of lien, serve the owner or reputed owner, the original contractor or reputed contractor, the construction lender, if any, or reputed construction lender, if any, and the person with whom the claimant has contracted for the purchase of those items with a Preliminary Twenty (20) day Notice as prescribed by this section." (§33-992.01).

**4. When Must the Preliminary Notice Be Sent?      Within 20 days:**

Notice is to be given not later than 20-days after the lien claimant has first furnished labor, services, materials, machinery, fixtures, or tools to the jobsite. If not, the claim will only cover material, services, labor, machinery, fixtures, or tools within 20-days of the date the Preliminary 20-day Notice is given. (§33-991.01 and 33-992.01E).

**5. What Information Must a Preliminary Notice Contain?**

The Preliminary 20-Day Notice (§33-992.01) must contain:

- a. A general description of the labor, professional services, materials, machinery, fixtures or tools.
- b. An estimate of the total price.
- c. The name and address of the person furnishing labor, professional services, materials, machinery, fixtures or tools.
- d. The name of the person who contracted for the purchase.
- e. A legal description, subdivision plat, street address, location with respect to commonly known roads or other landmarks or other description of the jobsite sufficient for identification.
- f. Language from the statute that, in essence, says:

“... this is not a lien and this is not a reflection on the integrity of any contractor or subcontractor. If bills are not paid a mechanics’ lien leading to the loss, through court foreclosure proceedings, of all or part of your property being improved may be placed against the property. You may wish to protect yourself by either:

  - i. Requiring your contractor to furnish a conditional waiver and release pursuant to statute.
  - ii. Requiring your contractor to furnish an unconditional waiver and release pursuant to statute.
  - iii. Any other method which is appropriate.”
- g. Language from the statute that provides for the recipient to acknowledge receipt of the notice. See the form which follows below at paragraph 9(b), p. 5.

(A.R.S. § 33-992.01)

**6. How Is the Preliminary Notice Served on the Owner and others?**

Notice may be given by mailing the notice by first class mail sent with a certificate of mailing, registered or certified mail, postage prepaid in all cases, and addressed to

the person to whom notice is to be given at a residence or business address. Service is complete at the time of deposit of mail. (A.R.S. § 33-992.01(F)).

## 7. **What Dollar Amount Should Be in the Preliminary Notice?**

The preliminary notice should contain the contract amount and will cover an amount not greater than 20% more than the amount given in the preliminary notice. If the claim exceeds 20% of the original notice or if the work or materials are not within the scope of the description, a **new** notice must be given. (A.R.S. § 33-992.01 (G) & (H))

## 8. **How to Get Property Information from the Owner:**

a. *If you are not sure of information about the owner, general contractor or construction lender, you may make a written request to the owner:*

Within ten days after receipt of a written request from any person intending to file a preliminary 20-day notice, the owner must furnish a written statement containing the following information:

- i. Legal description or address of the property sufficient for identification.
- ii. Name and address of owner.
- iii. Name and address of original contractor.
- iv. Name and address of construction lender, if any.
- v. If a payment bond has been recorded pursuant to 33-1003, the owner must furnish a copy of the bond and the name and address of the surety and agent. (A.R.S. § 33-992.01(I))

b. *What if the owner doesn't provide information?*

Failure of the owner to furnish the information required does not excuse the requirement of a preliminary 20-day notice, but it does stop the owner from raising any inaccuracy of information in a preliminary 20-day notice as a defense. (A.R.S. § 33-992.01 (I) & (J))

c. *What if the claimant receives the owner's information after serving a 20-day notice, and discovers that the prior notice contained inaccurate information?*

If information is later received by the claimant from the owner that causes the claimant to realize that the information in the preliminary notice was inaccurate, the claimant has thirty (30) days after the receipt of the information to provide an amended preliminary notice. The amended preliminary notice shall be "considered as having been given at the same time as the original" notice, **except** it is effective only as to work performed or material supplied rendered 20 days prior to the date of the amended preliminary notice or the date the original preliminary notice was given to the owner, whichever occurs first. (A.R.S. § 33-992.01 (J)) [Another crystal clear sentence from the legislature to make our jobs easy.]

d. *What if a payment bond has been recorded?*

If a payment bond has been recorded in compliance with A.R.S. §33-1003 and the owner fails to furnish a copy of the bond and other required information, the claimant shall retain lien rights to the extent prejudiced as a direct result of not timely receiving a copy of the bond and other information. (A.R.S. § 33-992.01(J))

9. **Proof of Mailing and Receipt:**

a. Proof of mailing.

Proof that the preliminary 20-day notice was mailed is to be made by an acknowledgment based upon A.R.S. § 33-992.02 setting forth the time and place of mailing, and signed and dated by the sender.

\_\_\_\_\_  
Signature of sender  
Date:\_\_\_\_\_

b. Proof of Receipt. The Twenty-Day Notice must include the following language for acknowledgment of receipt, below the sender's signature:

Acknowledgment of Receipt of Preliminary 20-Day Notice

This acknowledges receipt on (insert date) of a copy of the preliminary 20-day notice at (insert address).

Date: (Date this acknowledgment is executed)

\_\_\_\_\_  
Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person.



(A.R.S. § 33-992.01(D); A.R.S. § 33-992.02)

- c. What if the recipient fails to sign the receipt?

If the person on whom the notice is served fails to complete the acknowledgment and return it, proof of mailing may be made by an affidavit of the person who mailed the notice. The affidavit shall show the name and address to whom a copy of the preliminary 20-day notice was mailed. If mailing by first class mail sent with certificate of mailing, the certificate of mailing is to be attached. If mailed by certified or registered mail, a receipt of certification or registration is to be attached to the affidavit. (§33-992.02)

10. **Recording and Serving the Lien:**

- a. Last Date to Record Lien:

The notice and claim of lien must be recorded with the County Recorder within one hundred twenty (120) days after completion of the building, structure or improvement, **or** if a Notice of Completion has been recorded, within sixty (60) days after recordation of the Notice of Completion. (A.R.S. § 33-993(A))

- b. Service:

Duplicate copies of the Notice and Claim of Lien shall be served upon the owner within a reasonable time if the owner can be found within the County by a person authorized to serve legal papers. (A.R.S. § 33-993 (A))

- c. What Must the Lien Contain:

- i. Legal description of the real property.
- ii. Owner and name of person in contract with claimant.
- iii. Copy of contract or if oral, the terms, time and conditions of the contract.
- iv. The demand or payment after deducting credits and offsets.
- v. Date of completion.
- vi. The date that the preliminary notice was given and a copy of preliminary notice, along with proof of mailing. (See paragraph 9, p. 5-6) (A.R.S. § 33-993(A))

11. **When Does “Completion” Occur? “Completion” means the earliest of:**

- a. Thirty (30) days after final inspection and written final acceptance by the governmental body which issued the building permit for the building, structure or improvement.
- b. Cessation of labor for a period of sixty (60) consecutive days except when such cessation of labor is due to a strike, shortage of materials or act of God.  
(A.R.S. § 33-993(C))
- c. However, **beware** of this pitfall. “If no building permit is issued or the governmental body that issued the building permit for the building, structure or improvement does not issue final inspections and written final acceptances, then “completion” for the purposes of subsection A of this section means the last date on which any labor, materials, fixtures or tools were furnished to the property.” (A.R.S. § 33-993(D))
- d. For a residential subdivision or “multi-building residential project” each building is a separate work and the time to perfect a lien by recording the Notice of Claim of Lien starts “on the completion of each separate building.” A “separate building” means “one structure of a work or improvement and any garages or other appurtenant buildings.” (A.R.S. § 33-993(B))

12. **What If a “Notice of Completion” Is Recorded?**

A “Notice of Completion” may be recorded by the Owner or its agent any time after “completion” of construction. The Notice of Completion will shorten the time to record a lien from 120 days after “completion” to 60 days after the Notice of Completion was recorded. (A.R.S. § 33-993(A))

The Notice of Completion is to be signed and verified by the Owner or its agent and must contain the statutorily required information in the form provided by statute. (A.R.S. § 33-993(E) & (F))

If a Notice of Completion has been recorded, the person recording the notice within fifteen (15) days after recording shall mail by certified or registered mail postage prepaid a copy of the Notice of Completion and a written statement of the date of recording and the County Recorder’s recorded location information to the owner, the original contractor and all persons from whom the Owner has previously received a preliminary 20 day notice. (A.R.S. § 33-993(I))

If the Owner or its agent fails to mail a copy of the Notice of Completion and a written statement of the date of recording and the County Recorder’s recorded location information within fifteen days of recording to any person from whom the Owner has received a preliminary 20 day notice, such person shall have 120 days

“from Completion” to “impress and secure the lien provided for in this article.” (A.R.S. § 33-993(I)) (See paragraph 11 above)

13. **Filing Suit:**

A lawsuit must be filed within six (6) months after the lien is recorded. When suit is filed, a notice of pendency of action (lis pendens) must be recorded describing the real property pursuant to A.R.S. §12-1191 within five days after filing suit. (A.R.S. § 33-998; A.R.S. § 12-1191)

14. **What Good is a Lien?**

Mechanics and materialmen’s liens are preferred over all liens, mortgages or other encumbrances upon the property **attaching after** the time labor was commenced or the materials were commenced to be furnished–

**EXCEPT** for a mortgage or deed of trust that is given as security for a loan made by a construction lender (as defined in A.R.S. § 33-9201(A)(1)) if the mortgage or deed of trust is recorded within ten (10) days after labor commenced or materials were commenced to be furnished.

Mechanics and materialmen’s liens are also preferred over other liens, mortgages or other encumbrances of which the lienholder had no actual or constructive notice at the time he commenced labor or commenced to furnish materials.” (A.R.S. § 33-992(A))

15. **Special Provisions for Professional Service Providers:**

- a. Liens for professional services shall not attach to the property for priority purposes until labor has commenced on the property or until materials have commenced to be furnished to the property so that it is apparent to any person inspecting the property that construction, alteration or repair of any building or other structure or improvement has commenced.” (A.R.S. § 33-992(B))
- b. If no labor commences or no materials are furnished, a registered professional may record and foreclose a lien at any time after the registered professional’s work has commenced “if the registered professional’s work has added value to the property.” Liens for professional services shall attach not before but at the same time as other liens, and are on an equal footing with all other liens without reference to the date of recording a claim of lien and without reference to the time of performing the work or services. (A.R.S. § 33-992(C) & (D); A.R.S. § 33-1000(A))
- c. When a sale is ordered and the property sold, the proceeds of the sale, if not sufficient to discharge all liens against the property shall be prorated over the

respective liens that have equal footing, without reference to the date of recording. (§33-1000(B))

16. **Separate Priority for Site Work:**

The legislature has clarified the lien law for site development work which is separate from the construction contract for the building. This would apply to development for a shopping center or a residential subdivision where the site development is a separate contract from the building. Any improvement "not provided for in any contract for the construction of a building or other structure ..." is a "Separate Work." The liens arising "for each improvement at the site shall have separate priority from the liens arising from ... the construction of the building or other structure."

"Improvement at the site" means:

- a. Demolition or removal of improvements, trees or other vegetation.
- b. Drilling of test holes.
- c. Grading, filling or otherwise improving the property.
- d. Constructing or installing sewers or other public utilities.
- e. Constructing or installing the streets, highways or sidewalks.

The "Improvement at the Site" includes work done on any lot or tract of land or the street, highway or sidewalk in front of or adjoining any lot or tract of land." (A.R.S. §33-992(E))

17. **Exemption for Owner Occupied Residences:**

"Owner-occupied residential dwellings" owned prior to the commencement construction are **exempt** from liens unless there is a written contract with the owner. (A.R.S. § 33-1002)

18. **Preventing Liens:**

If an Owner wishes to avoid liens, an Owner may require the "Original Contractor" (Prime) to furnish a payment bond. The procedure has now been simplified:

- a. The payment bond need not be recorded "prior to or at the time of execution of the contract." However "upon recordation of a Payment Bond together with a copy of such contract in the Office of the County Recorder, in the County in which the land is located, no lien shall thereafter be allowed or recorded ...

except by the person who contracts, in writing, directly with the owner.” (A.R.S. § 33-1003(A))

- b. The payment bond must be in the amount of the project and in the form required of public entities (State, City, School Districts, etc.) as per A.R.S. §34-222 rather than the separate statutory form. (A.R.S. § 33-1003(B))
- c. In addition to the bond, the contract and a legal description of the property is to be recorded. (A.R.S. § 33-1003(A) & (B))

## 19. **Removing Liens:**

- a. Discharge of Lien Bond.

After a lien is recorded, a discharge of lien bond can be recorded by the owner or contractor to nullify the effect of the lien. The owner is required to serve a copy of the bond on the claimant within a reasonable time. The lien holder must then proceed against the bond and not against the property. (A.R.S. § 33-1004)

- b. Effect on Foreclosure Suit.

If a suit has already been filed when the discharge of lien bond has been recorded, then the claimant must add the surety and the principal as parties to the lien foreclosure suit within ninety days after receiving the bond. If the bond is served less than ninety days before the claimant is required to bring a foreclosure action, the claimant still has ninety days from receiving the bond to add the principal and surety to any suit that is filed for foreclosure. However, remember the claimant must still commence a suit within six months of recording, as required by A.R.S. § 33-998. (A.R.S. § 33-1004(C) & (D))

- c. If Bond Not Served on Claimant.

In the event that a bond is not served on the claimant, the claimant shall have six months after discovery of the bond to commence an action on the bond. However, in no event may an action be commenced on the bond after two years from the date it was recorded. (A.R.S. § 33-1004(F))

## 20. **Waiver of Liens:**

Liens may only be waived in accordance with the statute. The statutory forms of lien waivers are required. These lien waivers include conditional waivers and releases on progress payments, unconditional waivers and releases on progress payments, conditional waivers and releases of the final payment and unconditional waiver and release of final payment. (A.R.S. § 33-1008)

21. **Attorney's Fees:**

The Court may, in its discretion, award the prevailing party on the lien claim all reasonable expenses incurred including attorneys fees, other professional services and bond premiums. (A.R.S. § 33-995 (E); A.R.S. § 33-998(B))

**SUMMARY:**

This is a complex area of the law. We advise contacting an attorney familiar with construction law before proceeding. Lien rights can easily be lost. Since lien rights of this type only exist because of the statute, the courts may insist on *strict adherence* to every detail of the statute.

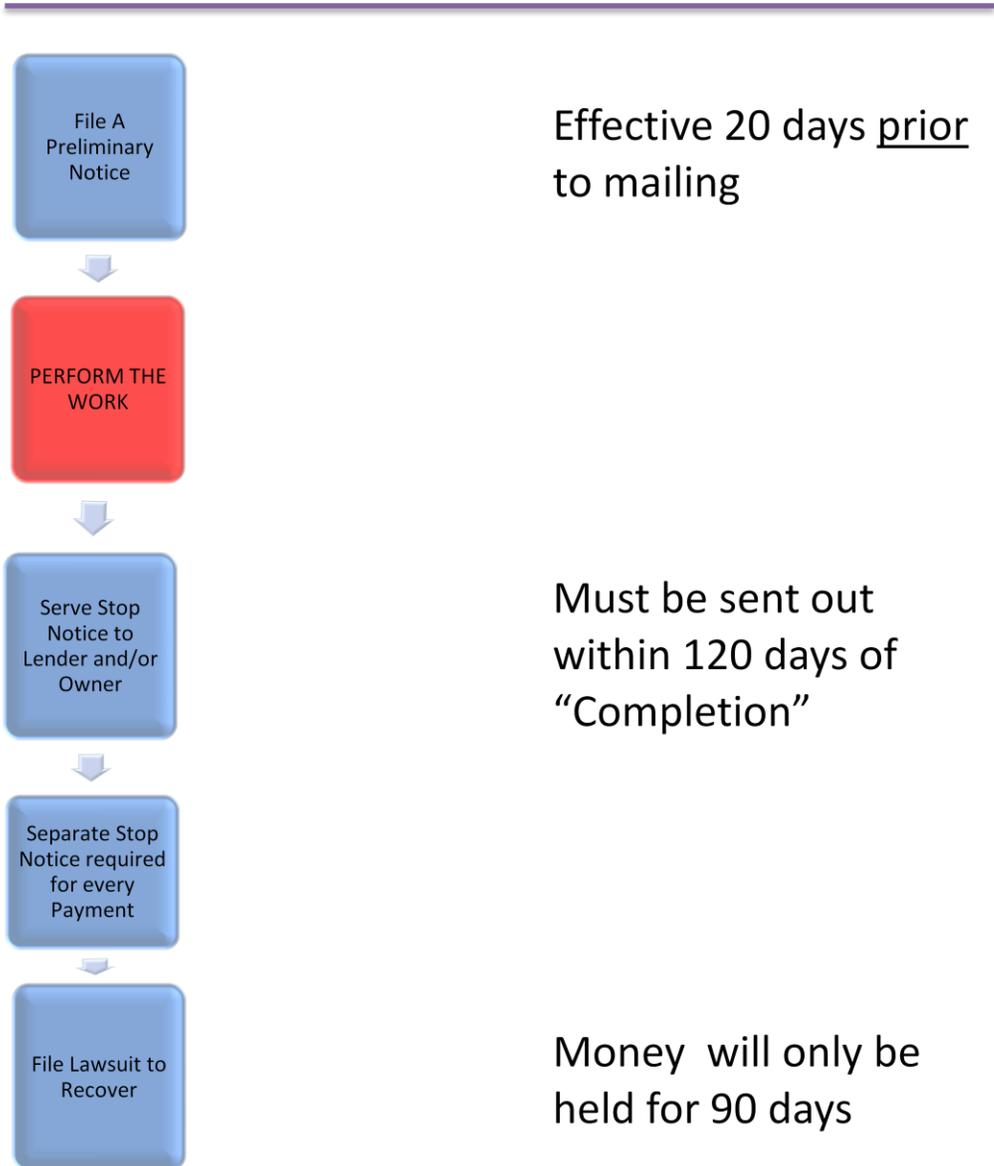
**LIEN AND BOND LAW**

**Use It or Lose It**

**PART II:  
STOP NOTICES**

# STOP NOTICES

To successfully file a Stop Notice, you must complete the following steps:



NOTE: Response to Stop Notice may be different depending on whether notice in NOT BONDED or BONDED (penal sum of 125% of amount of claim)

## PART II: STOP NOTICES

### Introduction

A new wrinkle has been added to Arizona construction law. It is called a "Stop Notice." This notice was originally intended to protect subcontractors and suppliers from the general contractor, but lenders, owners and even general contractors can use Stop Notices.

#### 1. **What Is the Owner to Do Upon Receiving a Stop Notice?**

The Owner, upon receipt of a Stop Notice, shall withhold from the Original Contractor (or any person acting under the Original Contractor's authority and to whom labor, professional services, material, machinery, fixtures or tools have been furnished or agreed to be furnished) sufficient money due or to become due to that Contractor to answer the claim asserted in the Stop Notice and any claim of lien that may be recorded for that claim, unless a Payment Bond has been recorded pursuant to A.R.S. § 33-1003. In other words, if no payment bond has been recorded, the owner must withhold 120% of the amount of the supplier's claim. (A.R.S. § 33-1057(A))

If a Payment Bond has been recorded, the Owner may withhold the money, but is not required to do so. (A.R.S. § 33-1057(A))

If an Owner after receipt of a Stop Notice elects not to withhold money because a Payment Bond has been recorded, Owner shall within thirty (30) days after receipt of the notice give written notice to the claimant that a bond has been recorded and shall furnish to the claimant a copy of the bond. (A.R.S. § 33-1057(B))

#### 2. **What Is the Lender to Do Upon Receiving a Stop Notice?**

A Construction Lender upon receipt of a Stop Notice may and upon receipt of a Bonded Notice shall withhold from the Borrower (or other person to whom it or the Owner may be obligated to make payments out of the construction fund) sufficient monies to answer the claim and any claim of lien that may be recorded. (A.R.S. § 33-1058(A))

However, if a payment bond has been recorded, a construction lender may not be strictly required to withhold monies, even if a Bonded Stop Notice is received. See ¶ 11, p. 15, below, discussing A.R.S. § 33-1058.

### 3. **What Must a Stop Notice Contain?**

A written notice sent by registered or certified mail signed and verified by the claimant or its agent that states:

- a. A description of labor, professional services, materials, machinery, fixtures for tools furnished or agreed to be furnished by the claimant.
- b. The name of the person to whom or for whom the labor, services, materials, etc. were furnished or agreed to be furnished.
- c. The amount and value of the labor, services, etc. already furnished and a total amount agreed to be furnished.
- d. The amount, if any, of payment received by the claimant for labor, services, etc. furnished or agreed to be furnished.
- e. The name and address of the claimant. (A.R.S. 33-1051)

### 4. **What Is a Bonded Stop Notice?**

A Stop Notice given to any Construction Lender together with a bond by a surety authorized to do business in Arizona in the amount (penal sum) equal to one hundred twenty five percent (125%) of the amount of the claim.

If the Owner, Original Contractor or Construction Lender recovers judgment in the lawsuit with the claimant involving a verified claim or lien filed by the claimant, the bond is to provide "sufficient monies" to pay all costs and damages that the Owner, Original Contractor or Construction Lender may sustain by reason of the Stop Notice Claim or lien, not exceeding the amounts specified in the Bond. (A.R.S. §33-1051(1))

### 5. **Who Can File a Stop Notice?**

Any person who has a right to file a claim of lien and who has filed a preliminary notice. Any person who has a right to a claim of lien, other than the Original Contractor, may give the Owner a Stop Notice or give the Lender a Stop Notice. (A.R.S. §33-1054) However, the Original Contractor may also give the Lender a Stop Notice. (A.R.S. §33-1058(A))

### 6. **What If an Owner or Lender Sends a Demand for a Stop Notice?**

Any person who is entitled to record a claim of lien, other than the original contractor, may give the Owner a Stop Notice. If a person entitled to give a Stop

Notice fails to serve a Stop Notice within thirty (30) days after written demand from the Owner, that person forfeits or loses the right to any mechanics' and materialmen's Stop Notice on the work. Demand from the Owner is to be sent by registered or certified mail, postage prepaid, addressed to the office or place where the potential lien claimant conducts business, and a notice is to include in bold face type (as large as the largest type that appears on the documents) "Demand for Service of Stop Notice Pursuant to A.R.S. §33-054." (A.R.S. §33-1054)

Any person entitled to record a claim of lien may give to the Construction Lender a Stop Notice or a Bond Stop Notice before the time limit for recording a lien. If the Construction Lender sends the proper form of demand for Stop Notice and no Stop Notice is sent within thirty (30) days after the written demand, the right to use a mechanics' and materialmen's Stop Notice is lost or forfeited. The written Demand for Stop Notice is to be sent by registered or certified mail, postage prepaid, addressed to the place of business where they maintain an office and include language (that is at least as large as the largest type that appears in the document) "Demand for Service of Stop Notice Pursuant to A.R.S. §33-1055." (A.R.S. §33-1055)

#### 7. **When Can a Stop Notice Be Given?**

A Stop Notice or Bonded Stop Notice may be given to an Owner or a Construction Lender by any person entitled to record a lien claim within the time in which a lien could have been recorded (120 days after completion of the building or 60 days after notice of completion). (A.R.S. § 33-1055(A) A.R.S. § 33-1056 (B)(2))

#### 8. **What Amount Can Be Recovered?**

If a Stop Notice or a Bonded Stop Notice is served by the Original Contractor or a Subcontractor, recovery is the net amount due the Original Contractor or Subcontractor after deducting:

- a. Bonded Stop Notice claims filed by the Subcontractor's material suppliers for work performed for the Original Contractor or Subcontractor.
- b. Payments already received (by the claimant) following a Stop Notice or Bonded Stop Notice.

(A.R.S. § 33-1055(B))

- c. With a Bonded Stop Notice, the Construction Lender is not required to withhold more than the net amount due for labor, services, materials, fixtures or tools. The Construction Lender is not liable for failure to withhold more than a net amount due after receiving the Bonded Stop Notice. (A.R.S. § 33-1055(C))

9. **How Is a Stop Notice Served?**

A Stop Notice shall be delivered to the Owner or left at the Owner's residence with a person of suitable age and discretion or at the Owner's place of business.

Service on the Construction Lender is made by serving the manager or other responsible officer or person at the branch office that administers or holds the money for the Lender.

A Stop Notice shall be served in person or by certified mail.

(A.R.S. § 33-1056(A))

10. **What Is Required for an Effective Stop Notice?**

Notice is effective only if claimant: (I) gives a preliminary notice pursuant to A.R.S. § 33-992.01 and § 33-992.02, and (ii) serves a Stop Notice (or Bonded Stop Notice) within the time required to record a Claim of Lien (120 days after completion of a building or 60 days after Notice of Completion has been recorded). (A.R.S. § 33-1056(B))

11. **What If a Payment Bond Is Recorded by the Contractor?**

If a Payment Bond has been recorded, the Construction Lender shall withhold monies if a Bonded Stop Notice is filed by the claiming Contractor, and, at its option, may hold monies if a Stop Notice or Bonded Stop Notice is given by anyone other than the Original Contractor. (A.R.S. § 33-1058(A))

If a Payment Bond has been recorded, but a Bonded Stop Notice is served (by someone other than the Original Contractor), a Construction Lender may elect not to withhold monies. (A.R.S. § 33-1058(B))

12. **Must the Lender Give a Claimant a Copy of the Payment Bond?**

If a Payment Bond has been recorded, and if the claimant with its Stop Notice or Bonded Stop Notice makes a written request for notice of the Lender's election (not to withhold monies) and sends a preaddressed stamped envelope, the Construction Lender shall give the claimant a copy of the Payment Bond within thirty (30) days after the Lender makes the election not to withhold money. (A.R.S. § 33-1058(B))

A Lender is not liable for failure to furnish a copy of the Bond if (1) the failure was not intentional; (2) was a "bona fide" error; (3) the Lender maintains "reasonable"

procedures to avoid such an error; and (4) the error was corrected not more than 20 days after the date the error was discovered. (A.R.S. § 33-1058(B))

**13. What If the Construction Money Has Been Assigned?**

No assignment of construction money by the Owner or the Contractor takes priority over the Stop Notice or Bonded Stop Notice and the assignment, whether made before or after a Stop Notice or Bonded Stop Notice, has no effect on the rights of the claimant who gives the Stop Notice or Bonded Stop Notice. (A.R.S. § 33-1059(A))

Payment of loan fees, interest and other charges to a Construction Lender is not an assignment, is not subject to any Stop Notice or Bonded Stop Notice and any allocation or disbursement of such sum is not subject to the Stop Notice and Bonded Stop Notice. (A.R.S. § 33-1059(B))

**14. What If There Is Not Enough Money Withheld When the Stop Notice Is Received?**

If monies withheld pursuant to a Stop Notice or Bonded Stop Notice are insufficient to pay valid claims of all persons who made claims, the monies withheld or required to be withheld are distributed pro rata among the respective valid claims, without regard to the time notices were given or actions, if any, were filed. (A.R.S. § 33-1060)

**15. What If a False Notice Is Sent?**

Anyone who "willfully" gives a False Notice or Bonded Stop Notice or "willfully" includes in the notice labor, services or material that are not furnished for the property forfeits all rights to participate in the prorata distribution, forfeits all rights to any lien and is subject to penalties of A.R.S. § 33-420. (A.R.S. § 33-1061)

**16. What If You Want to Dispute the Stop Notice and Release the Money?**

To release a Stop Notice or Bonded Notice:

An Owner, Construction Lender or Original Contractor or Subcontractor who disputes a Stop Notice or a Bonded Stop Notice, may file with the person whom the notice was served a Release Bond.

The Release Bond is to be equal to 125% of the amount claimed in the Stop Notice and conditioned for payment of any amount that does not exceed the bond amount (penal obligation) and that the claimant may recover on the claim, together with reasonable expenses including attorneys fees. (A.R.S. § 33-1062) A

copy of the Release Bond shall be served the same way a Stop Notice is served (with the Owner personally or left at the Owner's residence with a suitable person or the Owner's place of business; or at the Lender's office; service may be performed either personally or by certified mail). (A.R.S. § 33-1062(B)) (A.R.S. § 33-1006(A))

If a Release Bond is filed and served, money which has been withheld because of the Stop Notice or Bonded Stop Notice shall be released promptly. (A.R.S. § 33-1062)

**17. Filing Suit.**

To enforce the claim in the Stop Notice or Bonded Stop Notice, suit may be filed against the Owner or Construction Lender after 10 days from the date of service of the Stop Notice on either the Owner or Lender and shall be filed not later than 3 months after the time required to record a lien. (120 days after completion or 60 days after recording a Notice of Completion.) If all the parties to a claim stipulate in writing to extend the time to bring an action, time can be extended not more than 3 additional months. (A.R.S. § 33-1063)

**18. How Long Can Money Be Withheld?**

Money cannot be withheld because of a Stop Notice more than the three (3) months prescribed in subsection A of A.R.S. § 33-1063 unless suit is filed. (A.R.S. § 33-1063(B))

If suit is not filed, the Stop Notice is no longer effective and the money shall be paid or released to the contractor or others to whom the monies are due.

**19. If Suit Is Filed by the Claimant, What Notice Is Sent?**

Notice of commencement of suit shall be given within five days after the suit is filed. Notice is to be given in the same manner required for service of a Stop Notice or Bonded Stop Notice. A copy of the Release Bond shall be served the same way a Stop Notice is served (with the Owner personally or left at the Owner's residence with a suitable person or the Owner's place of business; or at the Lender's office; service may be performed either personally or by certified mail). (A.R.S. § 33-1056(A)) (A.R.S. § 33-1063(B))

**20. If Suit Is Filed by the Claimant, When Is the Money Released?**

If the suit to enforce Stop Notice or Bonded Stop Notice is dismissed, unless dismissed without prejudice, or if a judgment is rendered against the claimant, the

Stop Notice or Bonded Stop Notice is not effective and all money withheld is to be paid or released. (A.R.S. § 33-1064).

**21. If There Is More than One Lawsuit by Claimants on a Single Project?**

If more than one lawsuit has been filed, the Court may consolidate lawsuits. The Owner or Construction Lender may request that all suits may be joined into one lawsuit. (A.R.S. § 33-1065).

**22. Attorneys' Fees – Can They Be Collected?**

If a suit is filed against an Owner or Construction Lender to enforce a Bonded Stop Notice, the “prevailing party” shall be awarded reasonable attorneys fees from “the party held liable by the Court for payment of the claim.” (A.R.S. § 33-1066)

**23. Interest – Can It Be Collected?**

If the claimant for a Stop Notice, as a plaintiff, prevails in a lawsuit against the Owner or Construction Lender in a Bonded Stop Notice claim, interest at the legal rate (10% per annum) shall be included in the amount awarded, computed from the date the Bonded Stop Notice is served on the Owner or Construction Lender. (A.R.S. § 33-1067)

**24. Who Is a Construction Lender?**

Any mortgagee or beneficiary under a deed of trust lending money for cost of construction, alteration, repair or improvement in whole or in part, or any assignee or successor in interest of a Lender, or any escrow holder holding monies furnished or to be furnished by the Owner or other person as a source for which to pay construction costs. (A.R.S. § 33-1051(2))

**25. Who Is the Original Contractor?**

A Contractor that has a direct contract with the Owner. (A.R.S. § 33-1051(3))

**26. What If the Notice Is Defective?**

A Stop Notice is not invalid by reason of any defect if it is “sufficient to substantially inform the Owner of the information required” by this law. (A.R.S. § 33-1052)

## 27. **What Construction Work Is Subject to Stop Notices?**

A Stop Notice applies only to "private work", but does not include "Owner-occupied dwellings" defined by A.R.S. § 33-1002. Stop Notices do not apply to public works.

### **SUMMARY:**

This law has not yet been subject to litigation, but has problems which will ultimately have to be changed by the legislature. As owners, lenders, general contractors, subcontractors, suppliers, professionals and lien services use the law, the gaps and conflicts will raise issues which should be thoroughly reviewed with your attorney. Remember, strict compliance is required to secure and enforce these rights.

**LIEN AND BOND LAW**

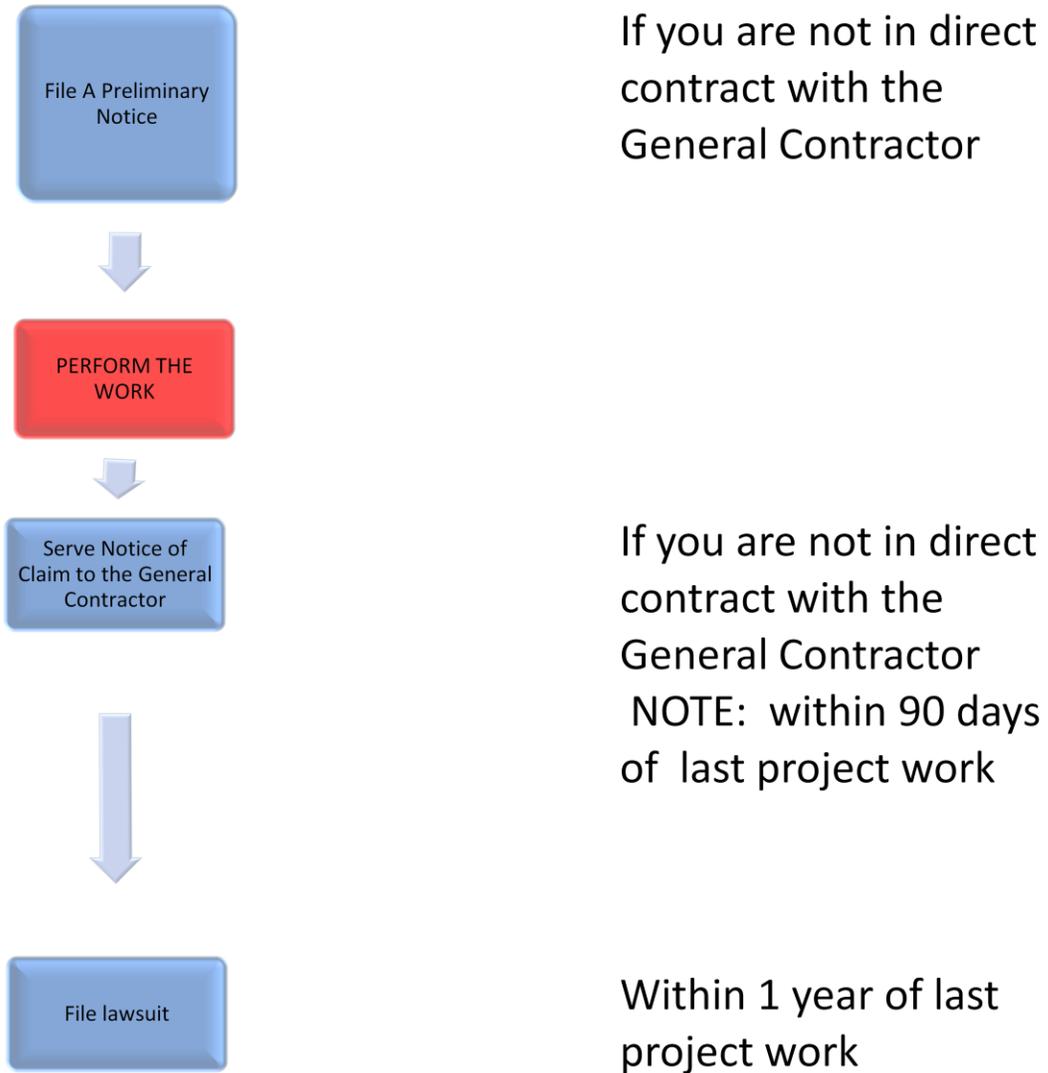
**Use It or Lose It**

**PART III:  
BONDS**

# STATE LAW BOND CLAIMS

To successfully file a State law bond claim, you must complete the following steps:

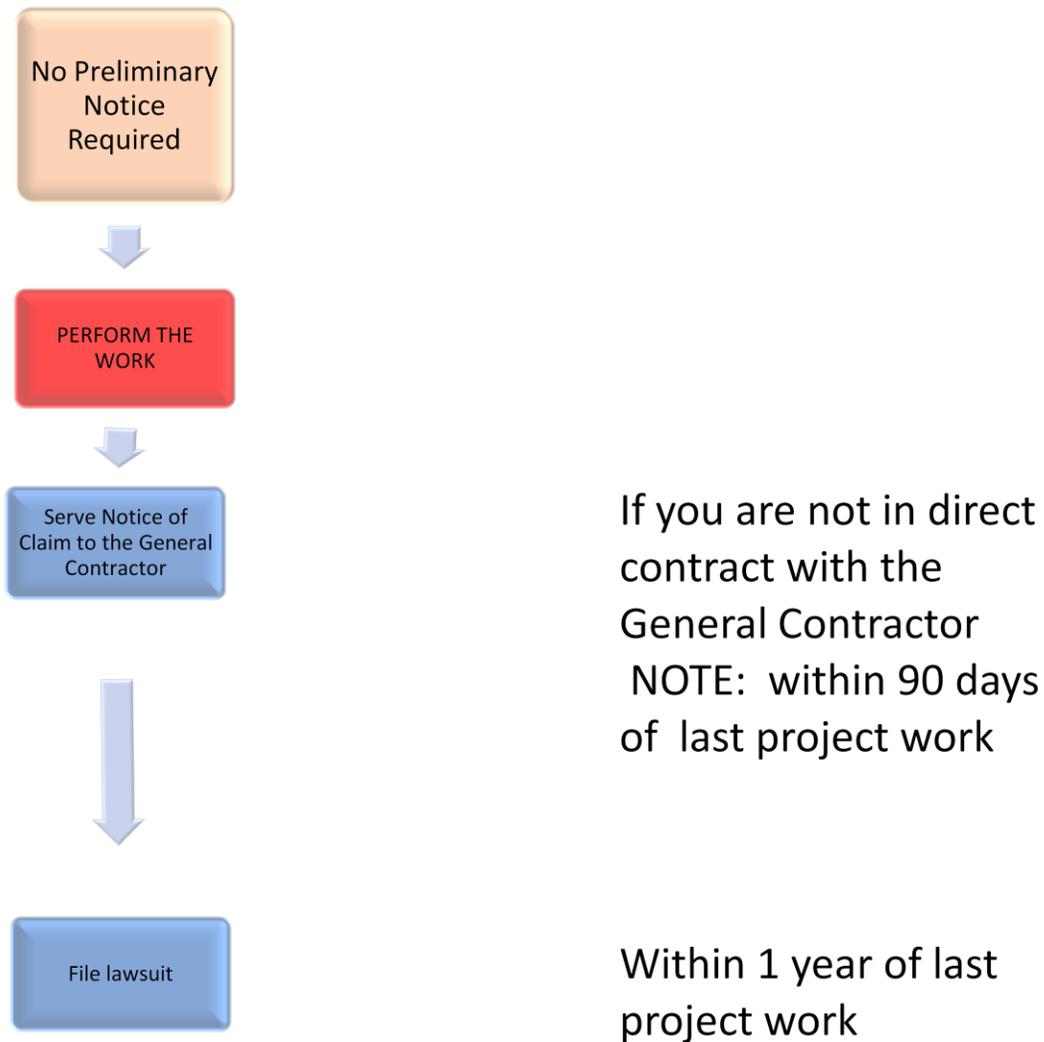
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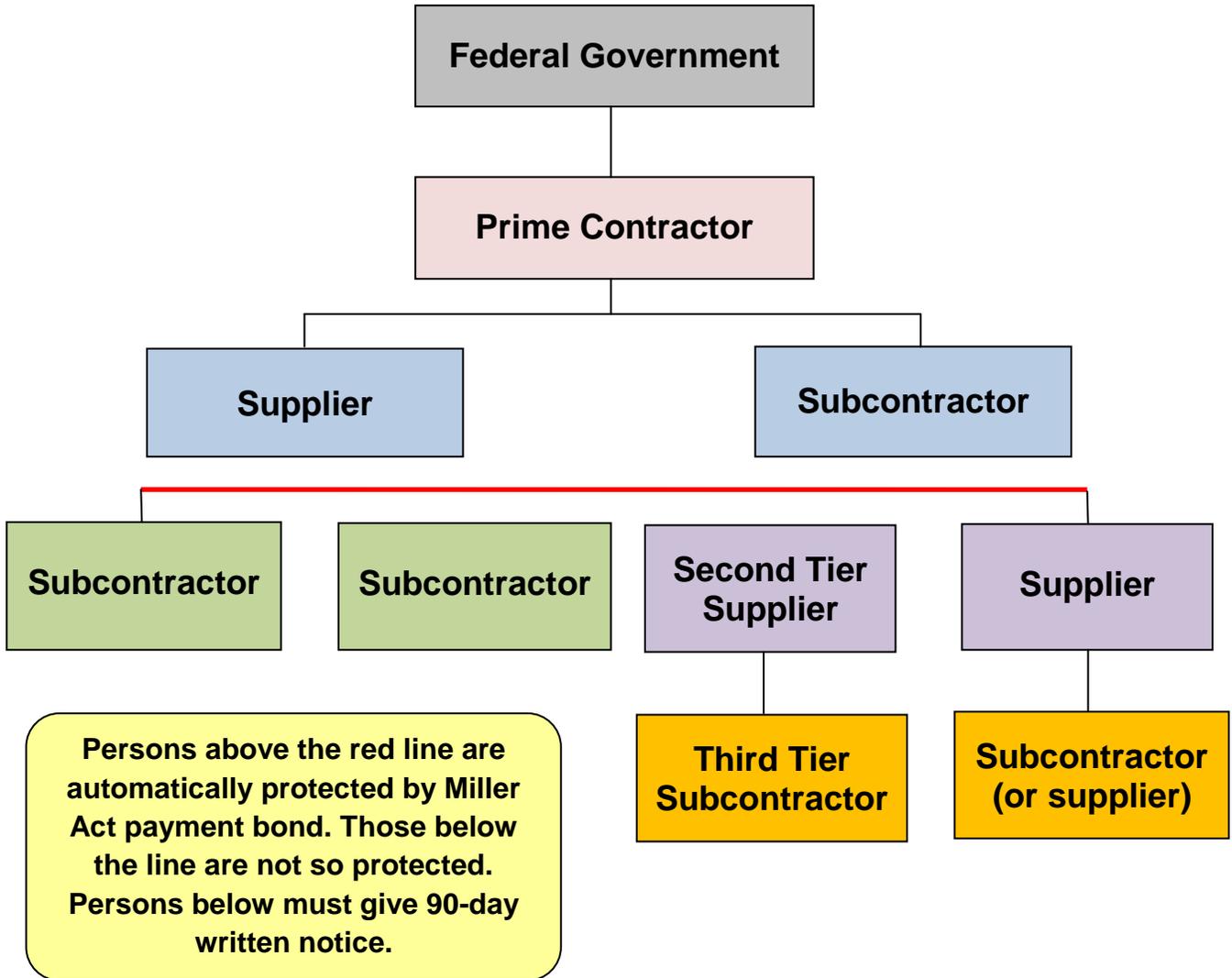
# FEDERAL LAW BOND CLAIMS

To successfully file a Federal law bond claim, you must complete the following steps:

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# Persons Covered by Miller Act Payment Bond



## **PART III: BONDS**

### **PAYMENT BOND CLAIMS**

What Are Payment Bonds?

Payment Bonds are a form of guaranty to allow unpaid subcontractors and material suppliers to qualify to be paid under the terms of a bond.

Three major categories of bonds are (1) Federal Miller Act Payment Bonds, (2) Arizona "Little Miller Act" Payment Bonds and (3) bonds issued on private construction projects.

#### **FEDERAL MILLER ACT PAYMENT BOND**

##### **1. Who May Make a Claim?**

"[A]ll persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person ...." 40 U.S.C. § 2070(a)(2).

The Miller Act is available for claims by parties who supply labor or materials directly to the prime contractor or a subcontractor of the prime contractor, for construction, alteration and repair of any public building or public works of the United States.

##### **2. Is a Preliminary Notice Required to Be Sent?**

No preliminary notice is required on a Federal Miller Act Payment Bond Claim.

##### **3. Must a Ninety (90) Day Notice Be Provided?**

Yes, unless there is a direct contract with the general contractor.

" ... however, ... any person having direct contractual relationship with a subcontractor but no contractual relationship expressed or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety (90) days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and a name of the party to whom the material was furnished or supplied or for whom the labor was done or performed...."  
40 U.S.C. § 270b(a)

An unpaid claimant must demand payment from the general contractor within ninety (90) days from the date on which he last performed labor or furnished material for which he was not paid, and which is the basis for the payment bond claim.

#### 4. **How Is Notice to Be Served?**

Service of the claim on the contractor must be made by “any means which provides written, third party verification of delivery to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States Marshall of the District in which the public improvement is situated is authorized by law to serve summons.” (40 U.S.C. § 270b(a))

#### 5. **When Must the Lawsuit Be Filed Against the Surety Issuing the Federal Miller Act Payment Bond?**

A lawsuit on a Miller Act Payment Bond must be filed within “ ... one year after the day on which the last of the labor was performed or material supplied ....” As a matter of prudent practice, do not count punch list or warranty work in determining the last day work or material was supplied. (40 U.S.C. § 270b(b))

#### 6. **Where Must Suit Be Filed?**

“Every suit instituted under this Section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere...” (40 U.S.C. 270b(b))

#### 7. **Can the Right to Sue on a Payment Bond Be Waived?**

“Any waiver of the right to sue on the payment bond required by this Act shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for the use in the performance of the contract.” (40 U.S.C. § 270b(c))

#### 8. **What Is the Amount of the Payment Bond?**

“The amount of the Payment Bond shall be equal to the total amount payable by the terms of the contract unless the contracting officer awarding the contract makes a written determination supported by specific findings that a Payment Bond in that amount is impractical in which case the amount of the Payment Bond shall be set by the contracting officer. In no case shall the amount of the Payment Bond be less than the amount of the Performance Bond.” (40 U.S.C. § 270a(a)(2))

## ARIZONA LITTLE MILLER'S ACT

### 1. Who May Make a Claim?

"Claimant supplying labor or materials to the contractor or his subcontractors in the prosecution of the work provided for in such contract." A.R.S. § 34-222(A)(2) covers claims against cities, counties, towns or improvement districts. The same form of payment bond is required by the Arizona State Procurement Code, the State Board of Education, and the Board of Regents. (A.R.S. § 41-2574(2); A.R.S. § 41-2501; A.R.S. § 15-213(A)(1))

### 2. Is a Preliminary Notice Required to Be Sent?

Yes, unless there is a direct contract with the general contractor. "[A]ny such claimant having a direct contractual relationship with the subcontractor of the contractor furnishing such Payment Bond but no contractual relationship express or implied with such contractor shall have a right of action upon such payment bond upon giving the contractor only a written preliminary notice," as provided for in A.R.S. § 33-992.01(C)(1,2,3&4), (E) and (H). (A.R.S. § 34-223(A))

### 3. Must a Ninety (90) Day Notice Be Provided?

Yes, unless there is a direct contract with the general contractor.

"[A]ny person having direct contractual relationship with a subcontractor but no contractual relationship expressed or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to such contractor within ninety (90) days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied [or] for whom the labor was done or performed." (A.R.S. § 34-223(A))

An unpaid claimant must demand payment from the general contractor within ninety (90) days from the date on which he last performed labor or furnished material for which he was not paid, and which is the basis for the payment bond claim.

### 4. How Is Notice to Be Served?

Such notice shall be given by "any means that provides written, third-party verification of delivery to the contractor at any place the contractor maintains an office or conducts business, or at the contractor's residence." (A.R.S. § 34-223(A))

**5. When Must a Lawsuit Be Filed?**

"[N]o such suit shall be commenced after the expiration of one year from the date on which the last of the labor was performed or materials were supplied by the person bringing this suit." (A.R.S. § 34-223(B))

**6. Can You Obtain a Copy of the Bond?**

Yes. "The contracting body and the agent in charge of its office shall furnish to anyone making written application therefor who states that it has supplied labor or materials for such work, and payment therefor has not been made, or that it is being sued on any such bond, or that it is the surety thereon, a certified copy of such bond and the contract for which it was given ..." (A.R.S. § 34-223(C))

## PRIVATE PAYMENT BOND

A privately owned construction project may require a payment bond which may or may not be recorded. In order to make any claim, you must first obtain a copy of the bond, and comply with all the terms of the bond.

### 1. **Who Is Covered?**

The bond itself will state who is covered; read the bond.

### 2. **Must Preliminary Notice Be Given?**

Read the bond.

### 3. **Must a 90 Day Notice Be Given?**

Read the bond. Often in addition to the 90 day notice required by the Miller Act or the Little Miller Act, this may be required to be sent to the surety, the contractor and the subcontractor with whom the supplier is in contract.

### 4. **When Must Notice Be Sent?**

Read the bond.

### 5. **When Must Suit Be Filed?**

Read the bond, but A.R.S. § 20-1115 has a two year statute of limitations for insurance.

### 6. **If the Statutory Payment Bond is recorded with a copy of the legal description of the real property for the construction project, and a copy of the contract, can a lien be filed?**

No. A.R.S. § 33-1003, provides that:

“Upon recordation of the Payment Bond together with a copy of such contract in the office of the County Recorder, in the County in which the land is located, no lien shall thereafter be allowed or recorded by the person claiming a lien ... except by the person who contracts, in writing, directly with the owner.”

## PERFORMANCE BOND LAW

Statutory Provisions for the projects that are Public:

A.R.S.	Type of Contract/Work
§ 34-222	County, city, town, or tax levying public improvement districts, and county or city improvement districts <u>for the construction, alteration, or repair of any public building, a public work or improvement.</u> The language required in these statutory bonds is contained at A.R.S. § 34-222(F).
§ 34-608(A)(1)(a)	For <u>job-order-contracting construction services</u> amount of construction not include any design services, pre-construction services, finance services, maintenance services, operations services or other related services included in the contract. The specific language A.R.S. § 34-608(G).
§ 34-608(A)(1)(b)	<u>Construction-manager-at-risk construction services and design-build construction services</u> amount equal to the price of construction not include the cost of any design services, pre-construction services, finance services, maintenance services, operations services or any other related services included in the contract. The specific language A.R.S. § 34-608(G).
§ 41-2574(1)	<u>Every expenditure of public monies, including federal assistance monies by this state, for building, altering, repairing, improving or demolishing any public structure or other public improvements of any kind to any public real property,</u> performance bond in an amount equal to one hundred percent of the contract price. Performance bonds for in accordance with A.R.S. § 34-222, <i>supra</i> .
§ 41-2574(1)(a)-(b)	<u>Every expenditure of public monies, including federal assistance monies by this state, for construction services, which includes job-order-contracting construction services, construction-manager-at-risk construction services and design-build construction services,</u> one hundred percent of the price in the contract but shall not include any design services, pre-construction services, finance services, maintenance services, operations services or other related services included in the contract. Performance bonds A.R.S. § 34-608
§ 15-213	<u>School district for construction, alteration, or repair of any project</u> full contract amount

§ 15-213	<u>School district, job-order-contracting construction services</u> to full amount of construction under the job-order-contracting construction services contract, but shall not include any design services, pre-construction services, finance services, maintenance services, operations services or other related services included in the contract.
§ 15-213	<u>School district construction-manager-at-risk construction services and design-build construction services</u> amount equal to price of construction not include the cost of any design services, pre-construction services, finance services, maintenance services, operations services or any other related services included in the contract.
§ 11-806.01	<u>County board of supervisors</u> performance bond installation of required street, sewer, electric and water utilities, drainage, flood control and improvements.
§ 48-925	<u>County improvement district</u> , including domestic wastewater improvement districts, for the construction, reconstruction and repair of any street, sewer or waterworks performance bond in accordance with A.R.S. § 34-222, <i>supra</i> .
§ 9-463.01	<u>Unincorporated city</u> or town performance bond assure the installation of required <u>street, sewer, electric and water utilities, drainage, flood control and improvements</u> .
§ 48-2055	<u>Sanitary district</u> construction, reconstruction and repair of all or part of the improvements and maintenance of sewers, pipelines and channels for sanitary or drainage purposes, treatment works, effluent disposal facilities and other appurtenances in, under, over or through any street performance bond in accordance with A.R.S. § 34-222, <i>supra</i> .
§ 48-587	<u>Public improvement district</u> to provide public service within the district including such services as public safety, fire protection, refuse collection, street or sidewalk cleaning or landscape maintenance in public areas, performance bond in accordance with A.R.S. § 34-222
§ 48-2665	<u>Construction, maintenance, operation and repair works necessary for drainage purposes</u> performance bond full contract A.R.S. § 34-222
§ 48-2665	<u>Purchase of materials for the construction, maintenance, operation and repair works necessary for drainage purposes,</u>

	performance bond A.R.S. § 34-222
§ 48-2986	<u>Construct, maintain and keep in repair levees</u> for the protection of lands from overflow performance bond amount equal to the full contract amount in A.R.S. § 34-222, <i>supra</i>
§ 48-4857(E)	<u>Active management area water district for the construction or maintenance of district facilities</u> full contract § 34-222, <i>supra</i>
<b>Department of Transportation:</b>	
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§ 28-6713	Contracts with a county for the construction or reconstruction county and other legal subdivision highways to performance bond full contract in favor of the Arizona Department of Transportation
§ 28-6748	Contracts with a county for the construction or improvement of public highways performance bond full contract amount in Arizona Department of Transportation.
§ 28-6923	Construction or reconstruction of department facilities an expenditure of fifty thousand dollars or more, performance bond full contract amount, Arizona Department of Transportation
§ 28-7363	Design-build method of delivery of highway construction projects, fifty thousand dollars or more, performance bond, full contract, Arizona Department of Transportation
§ 28-7366	Construction-manager-at-risk construction services and job-order-contracting construction services amount equal to the full contract, Arizona Department of Transportation
<b>Damages Covered:</b>	
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§ 48-586	Allows the governing <u>municipal public improvement districts</u> to prescribe an amount, not as a forfeit or penalty, but as <u>liquidated damages</u> , per calendar day to be paid by the contractor if the contractor fails to complete the work within the time fixed in the contract

<b>Limitations on Damages:</b>	
	<p>Surety's liability is strictly limited to that assumed by its terms. <i>Cushman v. National Sur. Corp. Of New York</i>, 4 Ariz. App. 24, 417 P.2d 527 (1966).</p> <p>"The 'cost of repair' rule, general rule of damages applicable to breach of construction contracts, reasonable costs of construction and completion in accordance with the contract." <i>Maricopa County v. Walsh &amp; Oberg Architects, Inc.</i>, 16 Ariz. App. 439, 441, 494 P.2d 44, 46 (1972).</p>
<b>Interest:</b>	
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§ 44-1201(A)	<p>Provides that interest on any loan, indebtedness, judgment or other obligation, ten percent per annum, unless a different rate is contracted for in writing. Arizona performance bond is liable for interest calculated from the date the sums became due, rather than when demand is made upon the surety for payment. <i>Webb v. Crane Co.</i>, 52 Ariz. 299, 80 P.2d 698 (1938);</p>
<b>Taxes:</b>	
	<p>Performance bond surety on road construction contract was liable for its principal's unpaid unemployment insurance taxes incurred in connection with bonded project. <i>Hartford Accident &amp; Indem. Co. v. Arizona Dep't of Transp.</i>, 172 Ariz. 564, 569-70, 838 P.2d 1325, 1330 (Ct. App. 1992).</p>
<b>Bad Faith Damages:</b>	
	<p>A surety will incur tort liability "if it either knows that its position is groundless or when it fails to undertake an investigation adequate to determine whether its position is tenable." <i>Dodge Fidelity &amp; Deposit Co. of Md.</i>, 161 Ariz. 344, 347, 778 P.2d 1240, 1243 (1989). As long as a surety acts reasonably in response to a claim made by its obligee, the surety does not risk bad faith tort liability.</p>

<b>Penal Sum Variations: Limitations per statute:</b>	
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§ 48-924(E)	If the board of directors of any <u>county improvement districts</u> finds that the contractor is unable to continue with the work or to perform the work according to the contract or has not performed the work according to the contract, hold the contractor in default and make demand on the surety. <u>The demand may not exceed the penal sum of the performance bond.</u>
§ 48-586(F)	If the governing <u>municipal public improvement district</u> finds that the contractor is unable to continue with the work or to perform the work according to the contract, hold the contractor in default and make demand upon the surety. <u>The demand may not exceed the penal sum of the performance bond.</u>
§ 48-2054(E)	If any <u>sanitary district and sewer construction board</u> finds that the contractor is unable to continue with the work or to perform the work according to the contract, the board shall hold the contractor in default and make demand on the surety. <u>The demand may not exceed the penal sum of the performance bond.</u>
<b>Changes affect upon penal sum:</b>	
	Where the performance bond incorporates the construction contract, construction contract allows for additions and or deductions, the bond contemplates that such changes might be made. <i>Massachusetts Bonding &amp; Ins. Co. v. Lentz</i> , 40 Ariz. 46, 9 P.2d 408 (1932).
<b>Parties Covered: Third-Party Beneficiaries Generally</b>	
	An intention to benefit that person must be indicated in the contract itself, intentional and direct, definitely appear, intend to recognize the third party as the primary party in interest. <i>Norton v. First Fed. Sav.</i> , 128 Ariz. 176, 178, 624 P.2d 854, 856 (1981)

<b>Third-Party Beneficiaries and A.R.S. § 34-222</b>	
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§ 34-222(A)	Provides that a performance “bond shall be <u>solely</u> for the protection of the state or the public body awarding the contract, as the case may be.”
<b>Time for Suit:</b>	
	Time for filing an action under a performance bond is prescribed by the terms of the bond. <i>Decca Design Build, Inc. v. American Auto Ins. Co.</i> , 206 Ariz. 301, 77 P.3d 1251 (Ct. App. 2003) (enforcing AIA bond provisions limiting the time bring suit to two years from when payment became due); <i>Zuckerman v. Transamerica Ins. Co.</i> , 133 Ariz. 139, 142-43, 650 P.2d 441, 444-45 (1982) (upholding an insurance policy’s one-year limitations period, which was significantly shorter than the six-year statutory period applicable to written contracts).
<b>Suits Against Municipalities:</b>	
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§ 12-821	Provides that all actions against any public entity or public employee shall be brought within one year after the causes of action accrues and not afterward.
<b>Suits Against Public Entities:</b>	
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§ 12-821.01	Requires that all persons who have claims against a public entity or a public employee shall file claims with the person or persons authorized to accept service for the public entity or public employee as set forth in the Arizona Rules of Civil Procedure within one hundred eighty days (180 days— <u>not</u> six months) after the cause of action accrues. Claim shall contain facts sufficient to permit the public entity or public employee to understand the basis upon which liability is claimed, a specific amount can be settled, the facts supporting that amount.

	Ordinarily, the principal obligor on a surety bond must be joined in any action against the surety.
<b>Time for Answer After Suit</b>	
§ 20-222	Provides that were a surety is served with process through the Arizona Department of Insurance, the surety has forty (40) days to file an answer or other responsive pleading.
<b>Statutory Requirement to Negotiate Delay Claims</b>	
§ 34-221(F)	Requires that a contract for the procurement of construction shall include a provision which provides for negotiations for the recovery of damages related to expenses incurred by the contractor for a delay for which the agent is responsible, unreasonable, not within the contemplation of the parties to the contract.
§ 15-213(D)	Expenses incurred by the contractor for a delay for which the school district is responsible.
§ 48-586(E)	If the work is not prosecuted with diligence, the governing body, after a hearing upon notice served upon the contractor and his bondsmen, may prescribe such terms and conditions as it deems proper before permitting the contractor to continue with the work.
§ 48-2054(D)	Sanitary district and/or sewer construction board, may prescribe such terms it deems proper before permitting the contractor to continue with the work
<b>Subrogation of Surety to Rights of Judgment Creditor</b>	
§ 12-1643(A)	When surety is compelled to pay a judgment or part thereof, or makes a payment upon a judgment by reason of suretyship, judgment shall not be discharged, but shall remain in force for the use of the surety considered as assigned to the surety

## PAYMENT BOND

### Public Projects

§34-221	Requires a contractor awarded a contract for work on a public building or improvement project to furnish a payment bond in an amount equal to the full contract amount
§34-222	Requires a contractor to furnish a bond in the full amount of the contract
<b>A.R.S.</b>	<b>Type of Contract/Work</b>
§34-606	Design-build or job-order-contracting construction services with any county, city, town or tax levying public improvement district, and county or city improvement district
§34-607	Construction manager at risk construction services, design-build construction services, or job-order-contracting construction services
§34-608	Construction manager at risk construction services, design-build construction services, and job-order-contracting construction services contract, but shall not include any design services, preconstruction services, finance services, maintenance services, operations services or other related services included in the contract
§15-213(A)(1)	Department of Education: procurement of construction projects by school districts
§28-6713©	Department of Transportation: contracts with a county for the construction or reconstruction of county and other legal subdivision highways
§28-6748©	Department of Transportation: contracts with a county for a construction or improvement of public highways
§28-6923(G)	Department of Transportation: all items of construction or reconstruction of department facilities involving an expenditure of fifty thousand dollars or more
§28-7363(F)	Department of Transportation: any design-build method of delivery of highway construction projects, involving an expenditure of fifty thousand dollars or more
§28-7366(M)	Department of Transportation: contract for construction-manager-at-risk construction services and job-order-contracting construction services

§41-2574(A)(2)	Arizona Procurement Code: contracts for every expenditure of public monies, including federal assistance monies by this state, for building, altering, repairing, improving or demolishing any public structure of other public improvements of any kind to any public real property or for construction services, which includes job-order-contracting construction services, construction-manager-at-risk construction services and design-build construction services
§48-587	Contracts with a municipal improvement district formed to provide public service within the district including such services as public safety, fire protection, refuse collection, street or sidewalk cleaning or landscape maintenance in public areas
§48-925	Contracts with any county improvement district, including domestic wastewater improvement districts, for the construction, reconstruction and repair of any street, sewer or waterworks
§48-2055	Contracts with a sanitary district for the construction, reconstruction and repair of all or part of the improvements and maintenance of sewers, pipelines and channels for sanitary or drainage purposes, treatment works, effluent disposal facilities and other appurtenances in, under over or through any street
§48-2986(B)	Contracts with an irrigation and water conservation district to construct, maintain and keep in repair levees for the protection of lands included therein from overflow
§48-4856(E)	Contracts with an active management area water district for the construction or maintenance of district facilities

## Labor and Material Covered

Payment bonds cover labor or material furnished in prosecution of the contract.

§34-609	<p>Payment bonds for contracts for construction-manager-at-risk, design-build, and job-order-contracting construction services, labor or material supplied to the contractor or the contractor's subcontractors in the prosecution of the construction is covered by the payment bond. Personal providing design services, preconstruction services, finance services, maintenance services, operations or other related services provided for in the contract are not covered by the payment bond.</p> <p>Under contractor's bond obligating surety to pay for "materials" furnished in work or performance thereof, anything furnished which becomes in effect part of plant or tools used by contractor in work, and which is intended to and can be used in another job, is not within term "materials," but supplies furnished, if they can be used but once in performance of work, are within condition of bond, <i>National Sur. Co. V. Arizona Grocery Co.</i>, 259 P. 404 (Ariz. 1927).</p> <p>Bond did not cover all materials furnished, but only such as actually entered into the work, or were consumed or substantially consumed, as distinguished from mere appliance in aid of performance, and, where so consumed, it was unnecessary that there be actual physical incorporation in the structure or improvement. <i>U. S. Fidelity &amp; Guaranty Co., v. California-Arizona Constr. Co.</i>, 186 P. 502 (Ariz. 1920).</p> <p>The purpose behind the statutes requiring surety bonds is to protect claimants supplying labor or materials to the contractor or subcontractors who carry out construction project work. <i>B.J. Cecil trucking, Inc. V. Tiffany Constr.</i>, P2d 184, 186 (Ariz. App. 1979).</p> <p>Rental equipment are within the class of claimants. <i>Arizona Gunitite Builders, Inc. V. Continental Cas., Co.</i>, 459 P.2d 724 (Ariz. 1969).</p> <p>The correct test whether parties are too remote to allow recovery under Little Miller Act, is functional relationship test, which examines the nature of dealings between the parties. <i>Trio Forest Products, Inc. V. FNF Const., Inc.</i>, 893 P.2d 1 (Ariz. App. 1994).</p>
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	In order for a person to recover as a third-party beneficiary of a contract, an intention to benefit that person must be indicated in the contract itself. <i>Norton v. First Fed. Sav.</i> , 624 P.2d 854 (Ariz. 1981).
§34-609 (continued)	<p>Incidental third-party beneficiaries are not entitled to recover under that bond. <i>Norton v. First Fed. Sav.</i>, 624 P.2d 854 (Ariz. 1981).</p> <p>General contractor may be liable to underpaid employees of subcontractor as third-party beneficiaries of contract but does not thereby become liable as employer for treble-damage penalty under A.R.S. § 23-355, and liability of surety on payment bond was limited by this section and terms of bond. <i>Rogers v. Speros Const. Co.</i>, 580 P.2d 750 (Ariz. App. 1978)</p> <p>Royalties due were covered <i>U. S. Fidelity &amp; Guaranty Co. V. California-Arizona Constr. Co.</i>, 186 P. 502 (Ariz. 1920).</p>

### Tiers Covered

A claimant is a person who has furnished labor or material in the prosecution of the work.

§34-222	A payment bond in an amount equal to the full contract amount solely for the protection of claimants supplying labor or materials to the contractor or his subcontractors in the prosecution of the work provided for in such contract.
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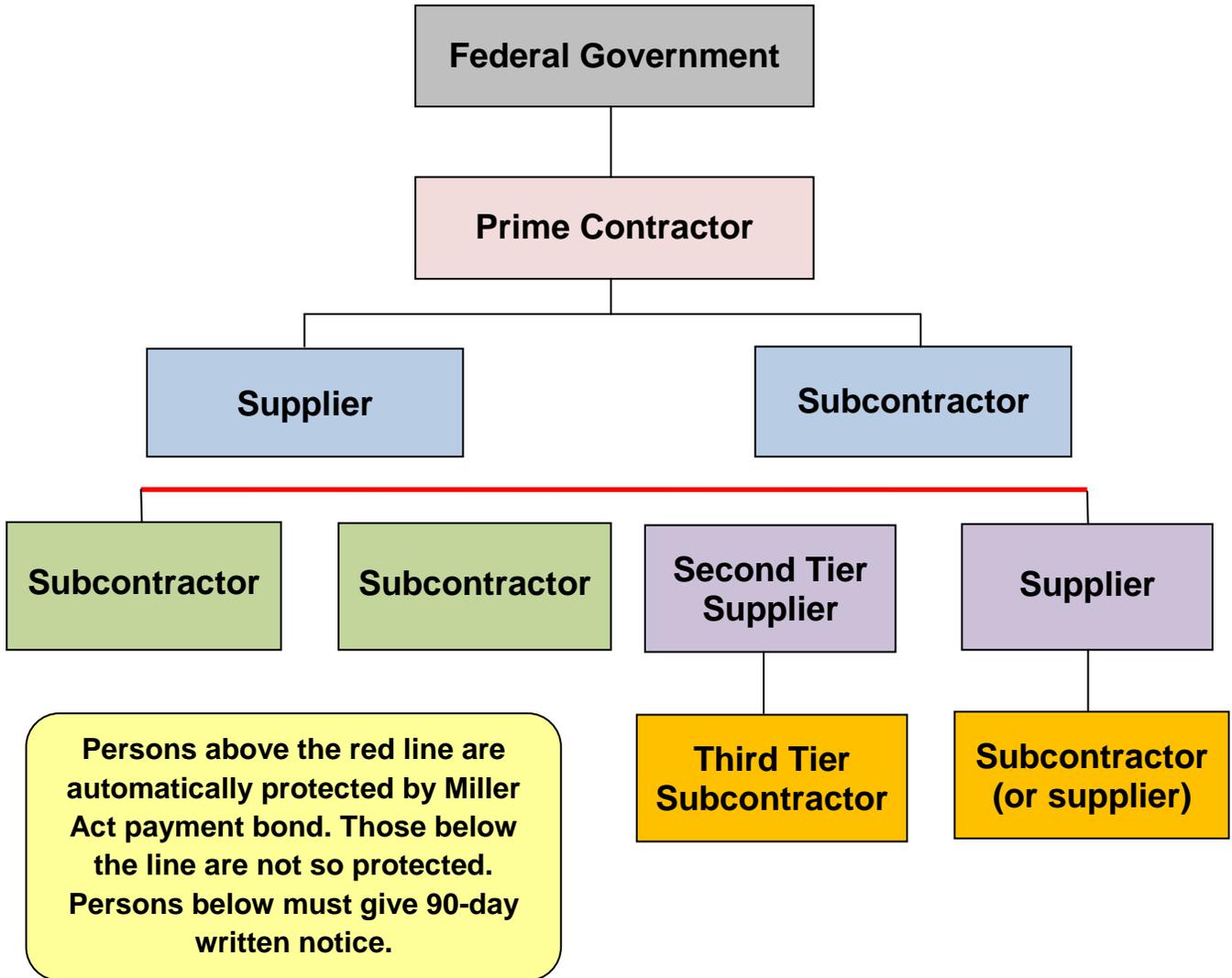
### Notice Required

First Tier Claimants

All persons covered by the payment bond, that are in direct contractual privity with the prime contractor must provide a 90 day notice before filing suit to enforce payment.

§34-223	Every claimant who has furnished labor or material in and who has not been paid in full therefore before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by the claimant or material was furnished for which such claim is made, right to sue on such payment bond.
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# Persons Covered by Miller Act Payment Bond



## Second Tier Claimants

All second-tier claimants, having a direct contractual relationship with a subcontractor of the contractor but no direct or implied contractual relationship with the contractor, must protect their right to enforce payment by giving the contractor a written preliminary 20 day notice, containing the language set forth in A.R.S. § 33-992.01, within 20 days of the first date on which the second-tier claimant performed labor or supplied material for the job and must contain the specific notice language contained in statute.

§33-992.01	<p>If the claimant fails to provide the notice required within 20 days of first performing his work, he is not precluded from making a claim, but his claim is limited to labor, professional services, materials, machinery, fixtures or tools furnished within 20 days prior to the service of the notice and at any time thereafter.</p> <p>The claimant need only provide one 20 day notice unless the claimant intends to exceed the original estimate of the value of labor or materials contained in the 20 day notice by 20 percent or more. If change is greater than 20%, the claimant must provide a revised 20 day notice.</p> <p>In addition to the 20 day notice, a second tier claimant must also provide the 90 day notice required for first tier claimants, which procedure is described above and codified at A.R.S. § 34-223.</p>
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## Time For Suit

### Public Bonds

A claimant must initiate suit within one year from the date on which the last of the labor was performed or materials were supplied by the person bringing this suit.

§34-223	<p>Work done solely to effect repairs, make corrections or complete a final inspection is insufficient to qualify as "work" pursuant to original contract and is not considered work performed or material supplied within one-year limitation of this section on suits or payment bond for a public construction project. However, work performed by materialman was sufficient to toll statutory period of limitations for suits on payment bond for public construction project, where work performed was essential to the proper functioning of the temperature control system, in furtherance of the original contract, despite performance after certification of substantial completion. <i>Honeywell, Inc. V. Arnold Constr. Co.</i>, 654 P.2d 301 (Ariz. App. 1982)</p> <p>Limitations period for action under Little Miller Act begins to run from subcontractor's completion of physical labor at job site; other administrative tasks performed after that date do not constitute "labor" under the Act. <i>R.E. Monks Constr. Co. v. Aetna Cas. &amp; Sur. Co.</i>, 944 P.2d 517 (Ariz. App. 1997).</p>
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### Private Bonds

§ 12-548	Requires that an action on a written contract commenced and prosecuted within six years after the cause of action accrues. However, the bond may contain a time limit which will govern. Read the bond.
§34-222	The bond will be deemed to be in the form required and set forth therein.
§20-1532	

## **INFORMATION TO SUPPORT A CLAIM**

### **What Information Should be Given to the Surety to Support a Claim?**

- a. Copy of the contract.
- b. Invoices.
- c. Proof of delivery.
- d. Accounting.

**LIEN AND BOND LAW**

**Use It or Lose It**

**PART IV:  
STATUTES**

## **PART IV: STATUTES**

### **ARIZONA LIEN LAWS**

#### **33-981. Lien for labor; professional services or materials used in construction, alteration or repair of structures; preliminary twenty day notice; exceptions**

- A. Except as provided in section 33-1002 and 33-003, every person who labors or furnishes professional services, materials, machinery, fixtures or tools in the construction, alteration or repair of any building, other structure or improvement, shall have a lien on such building, structure or improvement for the work or labor done or professional services, materials, machinery, fixtures or tools furnished, whether the work was done or the articles were furnished at the instance of the owner of the building, structure or improvement, or his agent.
- B. Every contractor, subcontractor, architect, builder or other person having charge or control of the construction, alteration or repair, either wholly or in part, of any building, structure or improvement is the agent of the owner for the purposes of this article, and the owner shall be liable for the reasonable value of labor or materials furnished to his agent.
- C. A person who is required to be licensed as a contractor but who does not hold a valid license as such contractor issued pursuant to title 32, chapter 10 shall not have the lien rights provided for in this section.
- D. A person required to give preliminary twenty day notice pursuant to section 33-992.01 is entitled to enforce the lien rights provided for in this section only if he has given such notice and has made proof of service pursuant to section 33-992.02.
- E. A person who furnishes professional services but who does not hold a valid certificate of registration issued pursuant to title 32, chapter 1 shall not have the lien rights provided for in this section.
- F. A person who furnishes professional services is entitled to enforce the lien rights provided for in this section only if such person has an agreement with the owner of the property or with an architect, an engineer or a contractor who has an agreement with the owner of the property.

#### **33-982. Claim of lien by assignee of contract or account for material furnished or labor performed**

An assignee of a contract or account for material furnished or labor performed may verify, file, record and enforce the contract as if he had been the original owner or holder thereof.

### **33-983. Lien for improvements to city lots or other land**

- A. A person who furnishes professional services or material or labors upon a lot in an incorporated city or town, or any parcel of land not exceeding one hundred sixty acres in the aggregate, or fills in or otherwise improves the lot of such parcel of land, or a street, alley or proposed street or alley, within, in front of or adjoining the lot or parcel of land at the instance of the owner of the lot or parcel of land, shall have a lien on the lot or parcel of contiguous land not exceeding one hundred sixty acres in the aggregate, and the buildings, structures and improvements on the lot for professional services or materials furnished and labor performed.
- B. Every contractor, subcontractor, architect, builder, subdivider or other person having charge or control of the improvement or work on any such lot or parcel of land, either wholly or in part, is the agent of the owner for the purposes of this section, and the owner shall be liable for the reasonable value of professional services, labor or material furnished at the instance of such agent, upon a lot or parcel of land as prescribed in this section, or any street, alley or proposed street or alley, within, in front of or adjoining such lot or parcel of land.

### **33-989. Lien for labor or material furnished mines and mining claims; priority**

- A. A person who labors or furnishes materials or merchandise of any kind, designed for or used in or upon a mine or mining claim, and to whom any amount is due for labor, material or merchandise, shall have a lien upon the mine or mining claim for the unpaid amounts.
- B. The lien provided for in subsection A shall attach when the labor was performed or the material or merchandise furnished:
  - 1. Under a contract between the person performing the labor or furnishing the material or merchandise and the owner of the mining claim, or his contractor.
  - 2. Under a contract between the person performing the labor or furnishing the material or merchandise and the lessee of the mine or mining claim, or his contractor, where the lease from the owner to the lessee permits the lessee to develop or work the mine or mining claim.
  - 3. Under a contract between persons performing the labor or furnishing the material or merchandise, and any person having an option to buy or contract to purchase the mine or mining claim from the owner thereof, where the option or contract permits the person to go upon the mine or mining claim, and to work or develop it.

- C. The lien shall attach to the mine or mining claim in or on which the labor was performed or material or merchandise furnished, in preference to any prior lien or encumbrance or mortgage upon the mine or mining claim.

**33-990. Posting of “no lien” notice by owner not operating mine; violation; classification**

- A. The provisions of section 33-989 shall not apply and the owner of the mine or mining claim shall not be responsible for any debts when the mine or claim is worked under lease, bond or option from the owner thereof, when the owner conspicuously posts at the collar of all working shafts, tunnels and entrances to the mine and boarding houses, on or before the day the lessee or those working the claim under bond, lease or option begin operations, and records in the office of the county recorder of the county within which the mine or mining claim is located within thirty days from the date of the lease, bond or option, a notice that:
  - 1. The mine or claim is not being operated by the owner.
  - 2. The owner will not be liable for labor performed or materials or merchandise furnished in the operation or development of the mine or mining claim.
  - 3. The mine or claim will not be subject to a lien therefore, referring to the contract, and particularly describing the mine or claim.
- B. The lessee or person operating the mine shall keep the notices posted, and upon failure to do so is guilty of a class 2 misdemeanor.

**33-991. Lands to which liens extend; rural lands; city lots; subdivision lots; mining claims**

- A. If the land upon which an improvement is made and labor or professional services have been performed lies outside of the limits of the recorded map or plat of a townsite, an incorporated city or town, or a subdivision, the lien shall extend to and include not to exceed ten acres of the land upon which the improvement is made and the labor has been performed.
- B. If the land on which an improvement is made or labor or professional services has been performed lies within the limits of a recorded map or plat of a townsite, an incorporated city or town or a subdivision, the lien shall extend to and include only the particular lot or lots upon which the improvement is made and the labor has been performed.
- C. If the labor is performed or the improvements made upon a mining claim, the lien shall extend to the whole thereof and to the group of which the claim upon which the work was done is a part if the group is operated as one property.

### **33-992. Preference of liens over subsequent encumbrances; professional services liens**

- A. The liens provided for in this article, except as provided in subsection B of this section or unless otherwise specifically provided, are preferred to all liens, mortgages or other encumbrances upon the property attaching subsequent to the time the labor was commenced or the materials were commenced to be furnished except any mortgage or deed of trust that is given as security for a loan made by a construction lender as defined in section 33-992.01, subsection A, paragraph 1, if the mortgage or deed of trust is recorded within ten days after labor was commenced or the materials were commenced to be furnished. The liens provided for in this article except as provided in subsection B of this section are also preferred to all liens, mortgages and other encumbrances of which the lienholder had no actual or constructive notice at the time the lienholder commenced labor or commenced to furnish materials except any mortgage or deed of trust that is given as security for a loan made by a construction lender as defined in section 33-992.01, subsection A, paragraph 1, if the mortgage or deed of trust is recorded within ten days after labor was commenced or the materials were commenced to be furnished.
- B. A notice and claim of lien for professional services shall not attach to the property for priority purposes until labor has commenced on the property or until materials have commenced to be furnished to the property so that it is apparent to any person inspecting the property that construction, alteration or repair of any building or other structure or improvement has commenced.
- C. If no labor commences on a property or no materials are furnished to the property, a registered professional may record and foreclose on a lien at any time after the registered professional's work has commenced if the registered professional's work has added value to the property. If labor or materials are furnished to the property, the priority of the registered professional's lien is governed by subsection B of this section.
- D. Liens for professional services shall attach not before but at the same time, and shall have the same priority, as other liens provided for in this article.
- E. If any improvement at the site is not provided for in any contract for the construction of any building or other structure, the improvement at the site is a separate work and the commencement of the improvement is not commencement of the construction of the building or other structure. The liens arising from work and labor done or professional services or materials furnished for each improvement at the site shall have a separate priority from liens arising from work and labor done or professional services or materials furnished for the construction of the building or other structure. A lien arising from work or labor done or

materials furnished for each improvement at the site attaches to property for priority purposes at the time labor was commenced or materials were commenced to be furnished pursuant to the contract between the owner and original contractor for that improvement to the site. For purposes of this subsection, "improvement at the site" means any of the following on any lot or tract of land or the street, highway or sidewalk in front of or adjoining any lot or track of land:

1. Demolition or removal of improvements, trees or other vegetation.
2. Drilling of test holes.
3. Grading, filling or otherwise improving.
4. Constructing or installing sewers or other public utilities.
5. Constructing or installing streets, highways or sidewalks.

**33-992.01 Preliminary twenty day notice; definitions; content; election; waiver; service; single service; contract**

A. For the purposes of this section:

1. "Construction lender" means any mortgagee or beneficiary under a deed of trust lending funds all or a portion of which are used to defray the cost of the contraction, alteration, repair or improvement, or any assignee or successor in interest of either.
2. "Original contractor" means any contractor who has a direct contractual relationship with the owner.
3. "Owner" means the person, or the person's successor in interest, who causes a building, structure or improvement to be constructed, altered or repaired, whether the interest or estate of the person is in fee, as vendee under a contract to purchase, as lessee, or other interest or estate less than fee. Where an interest or estate is held by two or more persons as community property, joint tenants or tenants in common, any one or more of the persons may be deemed the owner.
4. "Preliminary twenty day notice" means one or more written notices from a claimant that are given prior to the recording of a mechanic's lien and which are required to be given pursuant to this section.

B. Except for a person performing actual labor for wages, every person who furnishes labor, professional services, materials, machinery, fixtures or tools for which a lien otherwise may be claimed under this article shall, as a necessary prerequisite to the validity of any claim of lien, serve the owner or reputed owner, the original contractor or reputed contractor, the construction lender, if any, or reputed construction lender, if any, and the person with whom the claimant has contracted

for the purchase of those items with a written preliminary twenty day notice as prescribed by this section.

- C. The preliminary twenty day notice referred to in subsection B of this section shall be given no later than twenty days after the claimant has first furnished labor, professional services, materials, machinery, fixtures or tools to the jobsite and shall contain the following information:
1. A general description of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished and an estimate of the total price thereof.
  2. The name and address of the person furnishing labor, professional services, materials, machinery, fixtures or tools.
  3. The name of the person who contracted for the purchase of labor, professional services, materials, machinery, fixtures or tools.
  4. A legal description, subdivision plat, street address, location with respect to commonly known roads or other landmarks in the area or any other description of the jobsite sufficient for identification.
  5. The following statement in bold-face type:

In accordance with Arizona Revised Statutes section 33-992.01, this is not a lien and this is not a reflection on the integrity of any contractor or subcontractor.

#### Notice to Property Owner

If bills are not paid in full for the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished, a mechanic's lien lending to the loss, through court foreclosure proceedings, of all or part of your property being improved may be placed against the property. You may wish to protect yourself against this consequence by either:

1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes section 33-1008, subsection D, paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.
2. Requiring your contractor to furnish an unconditional waiver and release pursuant to Arizona Revised Statutes section 33-1008, subsection D, paragraphs 2 and 4 signed by the person or firm giving you this notice after you make payment to your contractor.
3. Using any other method or device which is appropriate under the circumstances.

D. The preliminary notice given by any claimant shall follow substantially the following form:

**Arizona Preliminary Twenty Day Lien Notice**

In accordance with Arizona Revised Statutes section 33-992.01 this is not a lien. This is not a reflection on the integrity of any contractor or subcontractor.

The name and address of the owner or reputed owner are:

This preliminary lien notice has been completed by (name and address of claimant):

Date: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

The name and address of the original contractor are:

You are hereby notified that the claimant has furnished or will furnish labor, professional

services, materials, machinery, fixtures or tools of the following general description:

The name and address of any lender or reputed lender and assigns are:

In the construction, alteration or repair of the building, structure or improvement located at:

The name and address of the person with whom the claimant has contracted are:

And situated upon that certain

lot(s) or parcel(s) of land in

\_\_\_\_\_ County, Arizona,

described as follows:

An estimate of the total price of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished is: \$ \_\_\_\_\_

(The following statement shall be in bold-faced type.)

**Notice to Property Owner**

**If bills are not paid in full for the labor, professional services, materials, machinery, fixtures or tools furnished, or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being improved may be placed against the property. You may wish to protect yourself again this consequence by either:**

- 1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes section 33-1008, subsection D, paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.**
- 2. Requiring your contractor to furnish an unconditional waiver and release pursuant to Arizona revised Statutes section 33-1008, subsection D, paragraphs 2 and 4 signed by the person or firm giving you this notice after you make payment to your contractor.**
- 3. Using any other method or device that is appropriate under the circumstances.**

(The following language shall be in type at least as large as the largest type otherwise on the document.)

Within ten days of the receipt of this preliminary twenty days notice the owner or other interested party is required to furnish all information necessary to correct any inaccuracies in the notice pursuant to Arizona Revised Statutes section 33-992.01, subsection I or lose as a defense any inaccuracy of that information.

Within ten days of the receipt of this preliminary twenty day notice if any payment bond has been recorded in compliance with Arizona Revised Statutes section 33-1003, the owner must provide a copy of the payment bond including the name and address of the surety company and bonding agent providing the payment bond to the person who has given the preliminary twenty day notice. In the event that the owner or other interested party fails to provide the bond information within that ten day period, the claimant shall retain lien rights to the extent precluded or prejudiced from asserting a claim again the bond as a result of not timely receiving the bond information.

Dated: \_\_\_\_\_

(Company Name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(Acknowledgment of receipt language from Arizona Revised Statutes section 33-992.02 shall be inserted here.)

- E. If labor, professional services, materials, machinery, fixtures or tools are furnished to a jobsite by a person who elects not to give a preliminary twenty day notice as provided in subsection B of this section, that person is not precluded from giving a preliminary twenty day notice not later than twenty days after furnishing other labor, professional services, materials, machinery, fixtures or tools to the same jobsite. The person, however, is entitled to claim a lien only for such labor, professional services, materials, machinery, fixtures or tools furnished within twenty days prior to the service of the notice and at any time thereafter.

- F. The notice or notices required by this section may be given by mailing the notice by first class mail sent with a certificate of mailing, registered or certified mail, postage prepaid in all cases, addressed to the person to whom notice is to be given at the person's residence or business address. Service is completed at the time of the deposit of notice in the mail.
- G. A person required by this section to give notice to the owner, to an original contractor, to the construction lender, if any, and to the person with whom the claimant has contracted need give only one notice to the owner, to the original contractor, to the construction lender, if any, and to the person with whom the claimant has contracted with respect to all labor, professional services, materials, machinery, fixtures or tools furnished for the building, structure or improvement, unless the actual estimated total price for the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished exceeds by twenty per cent or more the total price in any prior original or subsequent preliminary notice or unless the labor, professional services, materials, machinery, fixtures or tools are furnished under contracts with more than one subcontractor, in which case notice requirements shall be met for all additional labor, professional services, materials, machinery, fixtures or tools.
- H. If a notice contains a general description required by subsection C of this section of the labor, professional services, materials, machinery, fixtures or tools furnished up to the date of notice, it is not defective because after the date the person giving notice furnishes labor, professional services, materials, machinery, fixtures or tools that are not within the scope of the general description, or exceed by less than twenty per cent the estimated total price thereof.
- I. Within ten days after receipt of a written request from any person or the person's agent intending to file a preliminary twenty day notice, which request shall identify the person, the person's address, the jobsite and the general nature of the person's labor, professional services, materials, machinery or tools to which the preliminary twenty day notice shall apply, or within ten days of the receipt of a preliminary twenty day notice, the owner or other interested party shall furnish the person a written statement containing the following information:
1. The legal description, subdivision plat, street address or location with respect to commonly known roads or other landmarks in the area, or any other description of the jobsite sufficient for identification.
  2. The name and address of the owner or reputed owner.
  3. The name and address of the original contractor or reputed contractor.
  4. The name and address of the construction lender, if any, or reputed construction lender.

5. If any payment bond has been recorded pursuant to section 33-1003, a copy of the bond and the name and address of the surety company and bonding agent, if any, providing the payment bond.
- J. Failure to the owner or other interested party to furnish the information required by this section does not excuse any claimant from timely giving a preliminary twenty day notice, but it does stop the owner from raising as a defense any inaccuracy of the information in a preliminary twenty day notice, provided the claimant's preliminary twenty day notice of lien otherwise complies with the provisions of this chapter. If the information is received by the claimant after the claimant has given a preliminary twenty day notice and the information contained in the preliminary twenty day notice is inaccurate, the claimant shall, within thirty days of the receipt of this information, give an amended preliminary twenty day notice in the manner provided in this section. An amended preliminary twenty day notice shall be considered as having been given at the same time as the original preliminary twenty day notice, except that the amended preliminary twenty day notice shall be effective only as to work performed, materials supplied or professional services rendered twenty days prior to the date of the amended preliminary twenty day notice or the date the original preliminary twenty day notice was given to the owner, whichever occurs first. If a payment bond has been recorded in compliance with section 33-1003 and the owner or other interested party fails to furnish a copy of the bond and the other information as required by this section, the claimant shall retain lien rights to the extent precluded or prejudiced from asserting a claim against the bond as a direct result of not timely receiving a copy of the bond and the other information from the owner or other interested party.

**33-992.02 Proof of mailing of preliminary twenty day notice; receipt; affidavit**

Proof that the preliminary twenty day notice required by section 33-002.01 was given in accordance with section 33-992.01, subsection F shall be made as follows:

1. If given by mail, by an acknowledgment of receipt of the notice in a form substantially as follows:

\_\_\_\_\_  
Signature of sender

Acknowledgment of receipt of preliminary twenty day notice

This acknowledges receipt on (insert date) of a copy of the preliminary twenty day notice at (insert address).

Date: \_\_\_\_\_  
(Date this acknowledge is executed)



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Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person"

2. If a person to whom the notice is served pursuant to section 33-992.01, subsection F fails to complete the acknowledgment or fails to complete and return the acknowledgment within thirty days from the date of mailing, proof of mailing may be made by affidavit of the person making the mailing, showing the time, place and manner of mailing and facts showing that such service was made in accordance with section 33-002.01. The affidavit shall show the name and address of the person to whom a copy of the preliminary twenty day notice was mailed, and, if appropriate, the title or capacity in which he was given the notice. If mailing was made by first class mail sent with a certificate of mailing, the certificate of mailing shall be attached to the affidavit. If the mailing was by certified or registered mail, the receipt of certification or registration shall be attached to the affidavit.

**33-993. Procedure to perfect lien; notice and claim of lien; service; recording; definitions**

- A. In order to impress and secure the lien provided for in this article, every person claiming the benefits of this article, within one hundred twenty days after completion of a building, structure or improvement, or any alteration or repair of such buildings, structure or improvement, or if a notice of completion has been recorded, within sixty days after recordation of such notice, shall make duplicate copies of a notice and claim of lien and record one copy with the county recorder of the county in which the property or some part of the property is located, and within a reasonable time thereafter serve the remaining copy upon the owner of the building, structure or improvement, if he can be found within the country. The notice and claim of lien shall be made under oath by the claimant or someone with knowledge of the facts and shall contain:
  1. The legal description of the lands and improvements to be charged with a lien.
  2. The name of the owner or reputed owner of the property concerned, if known, and the name of the person by whom the lienor was employed or to whom he furnished materials.
  3. A statement of the terms, time given and conditions of the contract, if it is oral, or a copy of the contract, if it is written.
  4. A statement of the lienor's demand, after deducting just credits and offsets.

5. A statement of the date of completion of the building, structure or improvement, or any alteration or repair of such building, structure or improvement.
  6. A statement of the date of preliminary twenty day notice required by section 33-992.01 was given. A copy of such preliminary twenty day notice and the proof of mailing required by section 33-992.02 shall be attached.
- B. For purposes of this section, if a work of improvement consists of the construction for residential occupancy of more than one separate building without regard to whether the builds are constructed pursuant to separate contracts or a single contract, each building is a separate work and the time within which to perfect a lien by recording the notice of lien pursuant to subsection A of this section commences to run on the completion of each separate building. For purposes and any garages or subsection, "separate building" means one structure of a work or improvement and any garages or other appurtenant buildings in a multibuilding residential project or residential subdivision.
- C. For the purposes of subsection A of this section, "completion" means the earliest of the following events:
1. Thirty days after final inspection and written final acceptance by the governmental body which issued the building permit for the building, structure or improvement.
  2. Cessation of labor for a period of sixty consecutive days, except when such cessation of labor is due to a strike, shortage of materials or act of God.
- D. If no building permit is issued or if the governmental body that issued the building permit for the building, structure or improvement does not issue final inspections and written final acceptances, then "completion" for the purposes of subsection A of this section means the last date on which any labor, materials, fixtures or tools were furnished to the property.
- E. For the purpose of this section, "notice of completion" means a written notice which the owner or its agent may elect to record at any time after completion of construction as defined in subsection C of this section for the purpose of shortening the lien period, as provided in subsection A of this section. A notice of completion shall be signed and verified by the owner or its agent and shall contain the following information:
1. The name and address of the owner.
  2. The nature of the interest or estate of the owner.

3. The legal description of the jobsite and the street address. The validity of the notice is not affected by the fact that the street address recited is erroneous or that such street address is omitted.
4. The name of the original contractor, if any.
5. The names and addresses of any predecessors in interest if the property was transferred after the beginning of the work or improvement.
6. The nature of the improvements to the real property.

F. The notice of completion shall flow substantially the following form:

Notice of Completion

Notice is hereby given that:

1. The undersigned is owner of the interest or estate stated below in the property hereinafter described, or the undersigned is the owner's agent.
2. The full name of the undersigned is \_\_\_\_\_.
2. The full address of the undersigned is \_\_\_\_\_.
3. The nature of the interest or estate of the owner is: in fee. \_\_\_\_\_ (If other than fee, strike "In Fee" and insert, for example, "purchaser Under Contract of Purchase" or "Lessee.")
5. The full names and full addresses of all persons, if any, who hold interest or estate with the undersigned such as a joint tenants or tenants in common are:

Name Address

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6. The full names and full addresses of the predecessors in interest of the undersigned, if the property was transferred after the beginning of the work or improvement:

Name Address

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7. The nature of the improvements to the real property \_\_\_\_\_  
\_\_\_\_\_.
  
8. The work of improvement on the property hereinafter described was completed in accordance with the definition of completion in Arizona Revised Statutes 33-992, subsection C. (Fill in the appropriate completion date as defined in Arizona Revised Statutes section 33-992, subsection C.)
  - a. Date \_\_\_\_\_  
(thirty days after written final acceptance by governmental body)
  
  - b. Date \_\_\_\_\_  
(sixty days after cessation of labor)
  
9. The name of the original contractor, if any, for such work or improvement is \_\_\_\_\_.
  
10. The street address of the property is \_\_\_\_\_.
  
11. The legal description of property described above \_\_\_\_\_  
\_\_\_\_\_  
(attach exhibit if necessary)

Verification

I, the undersigned, certify that I am the owner, the owner's agent for the property or another interested party in the property, described in the above notice, or I certify that I am the original contractor of the improvements to the real property described in the above notice. I have read the foregoing notice and know and understand the contents there of, and the facts stated therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, Arizona.  
(date) (place where signed)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(personal signature)

\_\_\_\_\_  
(title)

(Acknowledgment)

Each notice of completion shall contain the following language in type at least as large as the largest type that otherwise appears on the document:

In order to shorten the lien period pursuant to Arizona Revised Statutes section 33-993, subsection A, a copy of the notice of completion and a written statement of the date of recording and the county recorder's record location information shall be served by certified or registered mail, postage, prepaid, to the owner, the original contractor and all persons from whom the person recording this notice has previously received a preliminary twenty day notice as prescribed by Arizona Revised Statutes section 33-993, subsection I.

Notice: Receipt of a notice of completion may alter the time you have to impress and secure a lien in accordance with Arizona Revised Statutes section 33-993, subsection A.

- G. If there is more than one owner, any notice of completion signed by less than all such owners shall recite the name and address of all such owners. If the notice of completion is signed by a successor in interest, it shall recite the names and addresses of his transferor or transferors.
- H. A notice of completion shall be recorded in the office of the county recorder of the county in which the property or some part of the property is located. The county recorder of the county in which the notice of completion is recorded shall index the notice of completion under the index classification in which mechanics' and materialmen's liens are recorded.
- I. If a notice of completion has been recorded, the person recording the notice, within fifteen days of recording, shall mail by certified or registered mail postage prepaid a copy of the notice of completion and a written statement of the date of recording and the county recorder's record location information to the original contractor and all persons from whom the owner has previously received a preliminary twenty day notice. In the event the owner or its agent fails to mail a copy of the notice of completion and a written statement of the date of recording and the county recorder's record location information within fifteen days of recording to any person from whom the owner has received a preliminary twenty day notice, such person shall have one hundred twenty days from completion as defined in section 33-993 to impress and secure the lien provided for in this article.

**33-994. Right of owner of property against which lien is claimed to withhold payment to original contractor; procedure**

Upon service of the notice and claim of lien, the owner may retain, out of the amount due or to become due the original contractor, the value of the labor or material furnished as shown by the notice and claim of lien. The owner shall furnish the original contractor with a true copy of the notice and claim of lien and if the contractor does not,

within ten days after receipt of the copy, give the owner written notice that he intends to dispute the claim, he shall be considered as assenting to the demand, which shall be paid by the owner when it becomes due.

### **33-995. Duty of contractor to defend action on claim of lien by person other than a contractor; rights of owner against contractor; other rights**

When a lien is recorded or notice given by any person other than a contractor, the contractor shall defend any action brought thereon.

- A. During pendency of such action the owner may withhold the amount sued for, and if judgment is given upon the lien, he may deduct from any amount due or to become due from him to the contractor the amount of judgment and costs.
- B. If the owner has settled with the contractor in full, or if such an amount is not owing to the contractor, the owner may recover back from the contractor the amount so paid by him, and for which the contractor was the part originally liable.
- C. Any contractor, subcontractors or other person who is obligated by statute, contract or agreement to defend, remove, compromise or pay any claim of lien or action and who undertakes such activity has the rights of the owner and beneficial title holder against all persons concerning such activity, as specified in sections 33-420 and 33-994.
- D. If any contractor or other person institutes an action to foreclose a lien pursuant to this article, the court may, at its discretion, award the prevailing party on the lien claim all reasonable expenses incurred in the action including attorney fees, other professional services and bond premiums under section 33-1004.

### **33-996. Joinder of persons claiming liens; claimant as party defendant; intervention**

Lienors not contesting the claims of each other may join as plaintiffs, and when separate actions are commenced the court may consolidate them, and make all persons having claims filed parties to the action. Persons claiming liens who fail or refuse to become parties plaintiff shall be made parties defendant, and those not made a party, may, at any time before final hearing, intervene.

### **33-997. Sale of property of satisfy lien**

No sale of property to satisfy a lien granted under the provisions of this article shall be made except upon judgment of foreclosure and order of sale.

### **33-998. Limitation of action to foreclose lien; attorney fees**

- A. A lien granted under the provisions of this article shall not continue for a longer period than six months after it is recorded, unless action is brought within that period to enforce the lien and a notice of pendency of action is recorded pursuant to section 12-1191 in the office of the county recorder in the county where the property is located. If a lien claimant is made a party defendant to an action brought by another lien claimant, the filing within such period of six months of an answer or cross-claim asserting the lien shall be deemed the commencement of an action within the meaning of this section.
- B. In any action to enforce a lien granted under this article, the court may award the successful party reasonable attorney fees.

### **33-999. Right to lienholder to have land and improvements sold together or separately; right of purchaser to possession**

- A. The person enforcing a lien granted under the provisions of this article may have the lot or land and improvements sold together, or he may have the improvements alone sold when it can be done without material injury to the property beyond the value of the improvements.
- B. When the improvements are sold separately, the purchaser shall be placed in possession by the officer conducting the sale and the purchaser shall have the right to remove the improvements within a reasonable time from the date of purchase.

### **33-1000. Priority among mechanic's and materialman's liens; prorating proceeds of foreclosure sale**

- A. Except as otherwise provided in section 33-992, the liens for work and labor done or professional services or material furnished, as provided for in this article, are on an equal footing without reference to the date of recording the notice and claim of lien, and without reference to the time of performing the work and labor or furnishing the professional services or material.
- B. When a sale is ordered and the property sold, the proceeds of the sale, if not sufficient to discharge all liens against the property without reference to the date of recording the notice and claim of lien, shall be prorated over the respective liens that have equal footing with the foreclosing lien.

**33-1001. Priority of claims for current wages owed by owner of property under levy**

- A. When a levy is made under execution, attachment or other similar writ, except when the writ is issued in an action under this article, a miner, mechanic, salesman, servant or laborer who has a claim against the defendant for labor performed may give notice of his claim, sworn to and stating the amount thereof, to the creditor, defendant debtor and the officer executing the writ, at any time within three days before sale of the property levied upon. The officer shall file the claim with the clerk of the court issuing the writ, and unless the claim is disputed by the debtor or creditor before sale, the officer shall pay the claimant from the proceeds of the sale the amount claimant is entitled to receive for such services rendered within sixty days next preceding the levy of the writ, not exceeding two hundred dollars to each claimant. Upon failure of the officer to do so, he shall be liable to the claimant therefor.
  
- B. The claim may be disputed by the debtor or creditor, or any lienholder, in writing, specifying the reasons for disputing it, verified and delivered to the officer before the sale, and shall be filed in the court issuing the writ. The officer shall pay all claims not disputed from the first money received. If the total amount of all claims presented exceeds the amount derived from the sale, the officer shall pay to the holders of the undisputed claims their pro rata share of the money and shall pay the pro rata amount of the disputed claims, together with an amount for costs as the court orders, into court. The court shall cite all parties interested to appear, and in a summary manner determine the validity of the disputed claims and direct the manner in which the officer shall distribute the proceeds of the sale.

**33-1002. Definitions; inapplicability of certain liens to owner-occupied dwelling; waiver void**

- A. In this section:
  - 1. "Dwelling" means real property upon which there has been constructed or is to be constructed any building, structure or improvement which is designed for either single one-family or single two- family residential purposes or activities related thereto, including an apartment in a horizontal property regime or other condominium.
  - 2. "Owner-occupant" means a natural person who:
    - a) prior to commencement of the construction, alteration, repair or improvement holds legal or equitable title to the dwelling by a deed or contract for the conveyance of real property recorded with the county recorder of the county in which the dwelling is located, and

- b) Resides or intends to reside in the dwelling at least thirty days during the twelve-month period immediately following completion of the construction, alteration, repair or improvement and does not intend to sell or lease the dwelling to others. Residence in the dwelling or intent to reside in the dwelling may be evidenced by the following or other physical acts:
  - i. The placing of his or her personal belongings and furniture in the dwelling, and
  - ii. Occupancy either by the person or members of his or her family. A single act shall not establish a person as an owner-occupant if such person permits exclusive occupancy by other than members of his or her family for other than temporary purposes thereby negating his or her intent to reside in the dwelling primarily for use as his or her home.
- B. No lien provided for in this article shall be allowed or recorded by the person claiming a lien against the dwelling of a person who became an owner-occupant prior to the construction, alteration, repair or improvement, except by a person having executed in writing a contract directly with the owner-occupant.
- C. Any provision of an agreement made or entered into by an owner-occupant which waives the provisions of this section is void.

**33-1003. Payment bond in lieu of lien right; bond purposes and conditions; recording**

- A. Every owner of land, including any person who has a legal or equitable interest therein, who enters a contract requiring any person to perform labor or professional services or to furnish materials, machinery, fixtures or tools in the construction, alteration or repair of any building, or other structure or improvement on such land, may avoid the lien provisions of section 33-981 pertaining to agents by requiring the person with whom he contracts to furnish a payment bond. Upon recordation of the payment bond together with a copy of such contract in the office of the county recorder, in the county in which he land is located, no lien shall thereafter be allowed or recorded by the person claiming a lien against the land on which the labor or professional services are performed or the materials, machinery, fixtures or tools furnished, as provided in this article, except by the person who contracts, in writing, directly with the owner.
- B. A payment bond furnished pursuant to subsection A of this section shall be in the amount and form prescribed by title 34, chapter 2, article 2. The contract recorded

with the bond shall contain a legal description of the land on which the work is being or is to be performed.

- C. The bond provided for in this section shall be executed solely by one or more surety companies holding a certificate of authority to transact surety business in this state issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1 and shall be accompanied by a power of attorney disclosing the authority of the person executing the same on behalf of the surety. Notwithstanding any other statute, the bond shall not be executed by an individual surety or sureties, even if the requirements of section 7-101 are satisfied.
- D. The county recorder of the county in which the bond and contract are recorded shall index the bond and contract under the index classification in which mechanics' and materialmen's liens are recorded.

**33-1004. Discharge of mechanic's liens; bond; limitations of actions; discharge of surety; judgment**

- A. After perfection of a lien pursuant to this article, an owner, including any person who has a legal or equitable interest in the land which is subject to the lien, a contractor, subcontractor, mortgagee or other lien creditor, may, either before or after the commencement of an action to foreclose such lien, cause to be recorded in the office of the county recorder, in the county in which the land is located, a surety bond in the form described in subsection B of this section, together with a power of attorney disclosing the authority of the person executing the same on behalf of the surety. Upon the recordation of such bond, the property shall be discharged of such lien whether or not a copy of the bond is served upon the claimant or he perfects his rights against the bond.
- B. A surety bond to discharge a lien perfected under the provisions of this section shall be executed by the person seeking to discharge such lien, as principal, and by a surety company or companies holding a certificate of authority to transact surety business in this state, issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. The bond shall be for the sole protection of the claimant who perfected such lien. Notwithstanding any other statute, the surety bond shall not be executed by individual surety or sureties, even if the requirements of section 7-101 are satisfied. The bond shall be in an amount equal to one and one-half times the claim secured by the lien and shall be conditioned for the payment of the judgment which would have been rendered against the property for the enforcement of the lien. The legal description of the property and the docket and page of the lien sought to be discharged shall be set forth in the bond.

- C. The principal on such bond shall, upon recordation thereof with the county recorder; cause a copy of the bond to be served within a reasonable time upon the lien claimant, and if a suit be then pending to foreclose the lien, claimant shall within ninety days after receipt thereof, cause proceedings to be instituted to add the surety and the principal as parties to the lien foreclosure suit.
- D. The bond shall be discharged and the principal and sureties released upon any of the following:
  - 1. The failure of the lien claimant to commence a suit within the time allowed pursuant to section 33-998.
  - 2. Failure of the lien claimant to name the principal and sureties as parties to the action seeking foreclosure of the lien if a copy of the bond has been served upon claimant. If the bond is served upon the claimant within less than ninety days from the date claimant would be required to commence his action pursuant to section 33-998, then the claimant shall have ninety days from the date he receives a copy of such bond to add the principal and the sureties as parties to the lien foreclosure suit.
  - 3. The dismissal of the foreclosure suit with prejudice as to the claimant or the entry of judgment in such suit against claimant.
- E. In an action to foreclose a lien under this article, where a bond has been filed and served as provided herein, a judgment for the claimant on the bond shall be against the principal and his sureties for the reasonable value of the labor and material furnished and shall not be against the property.
- F. In the event a copy of the bond is not served upon the claimant as provided in subsection C of this section, the claimant shall have six months after the discovery of such bond to commence an action thereon, except that action may be commenced on such bond after two years from the date it was recorded as provided in this section.
- G. The county recorder of the county in which the bond and contract are recorded shall index the bond and contract under the index classification in which mechanics' and materialmen's liens are recorded.

### **33-1005. Payments made in trust**

Monies paid by or for an owner-occupant as defined in section 33-1002 to a contractor, as defined in section 32-1101, as payment for labor, professional services, materials, machinery, fixtures or tools for which a lien is not provided in this article shall be deemed for all purposes to be paid in trust and shall be held by the contractor

for the benefit of the person or persons furnishing such labor, professional services, materials, machinery, fixtures or tools. Such monies shall neither be diverted nor used for any purpose other than to satisfy the claims of those for whom the trust is created and shall be paid when due to the person or persons entitled thereto. The provisions of this section shall not affect other remedies available at law or in equity.

### **33-1006. Release of mechanic's and materialman's liens; liability**

- A. When any lien established by the provisions of this article has been satisfied, the lienholder shall, within twenty days after satisfaction, issue a release of the lien.
- B. When any lien prohibited to be filed against the dwelling of an owner-occupant as defined in section 33-1002 has been recorded, the person claiming the lien shall, within twenty days of the written request of the owner-occupant, issue a release of the lien.
- C. The release issued pursuant to this section shall be in document form as specified in section 11-480. Failure to grant such a release shall subject the lienholder or person to liability in the amount of one thousand dollars and also to liability for actual damages.

### **33-1007. Definition of professional services**

In this article, unless the context otherwise requires, "professional services" means architectural practice, engineering practice or land surveying practice as defined in section 32-101.

### **33-1008. Waiver of lien**

- A. An owner or contractor by any term of their contract, or otherwise, may not waive or impair the claims or liens of other persons whether with or without notice except by their written consent or as prescribed by section 33-1 3. Any term of the contract to that effect shall be void. Any written consent given by any claimant pursuant to this section is unenforceable unless the claimant executes and delivers a waiver and release. This waiver and release is effective to release the property for the benefit of the owner, the construction lender, the contractor and the surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his authorized agent, and, in the case of a conditional release, if there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank on which it was drawn or by written acknowledgment of payment given by the claimant.

- B. No oral or written statement purporting to waive, release or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless it is pursuant to a waiver and release prescribed by *this* section or the claimant had actually received payment in full for the claim.
- C. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the mechanic's lien or bond claims.
- D. The waiver and release given by any claimant is unenforceable unless it follows substantially the following forms in the following circumstances:
  - 1. Where the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a progress payment and the claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

Conditional waiver and release on progress payment

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

On receipt by the undersigned of a check from \_\_\_\_\_  
(maker of check)

In the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_  
(amount of check) (payee or payees of check)

and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the job of \_\_\_\_\_  
(owner)

located at \_\_\_\_\_ to the following  
(job description)

extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_  
(person with whom undersigned contracted)

through \_\_\_\_\_ only and does not cover any retention, pending modifications and  
(date)



changes or items furnished after that date. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date: \_\_\_\_\_

(Company name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

2. Where the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a progress payment and the claimant asserts in the waiver that it has been paid the progress payment, the waiver and release shall follow substantially the following form:

Unconditional waiver and release on progress payment

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for all labor, services, equipment or material furnished to the jobsite or to

\_\_\_\_\_

(person with whom undersigned contracted)

On the job of \_\_\_\_\_

(owner)

located at \_\_\_\_\_

(job description)

and does hereby release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the above referenced project to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_

\_\_\_\_\_

(person with whom undersigned contracted)

through \_\_\_\_\_ only and does not cover any retention, pending modifications  
(date)

and changes or items furnished after that date.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Dated: \_\_\_\_\_

(Company name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

(Each unconditional waiver shall contain the following language, in type at least as large as the largest type otherwise on the document.)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

3. Where the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a final payment and the claimant is not paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

Conditional waiver and release on final payment

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

On receipt by the undersigned of a check from \_\_\_\_\_

(maker of check)

in the sum of \$ \_\_\_\_\_ payable to \_\_\_\_\_

(amount of check)

(payee or payees of check)

and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any

state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of \_\_\_\_\_ located at

(owner)

\_\_\_\_\_  
(job description)

This release covers the final payment to the undersigned for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_:  
(person with whom undersigned contracted)

except for disputed claims in the amount of \$\_\_\_\_\_. Before any recipient of this document relies on it, the person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Dated: \_\_\_\_\_

(Company name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

4. Where the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a final payment and the claimant asserts in the waiver that it has been paid the final payment, the waiver and release shall follow substantially the following form:

Unconditional waiver and release on final payment

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

The undersigned has been paid in full for all labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_.  
(person with whom undersigned contracted)

on the job of \_\_\_\_\_ located at \_\_\_\_\_  
(owner) (job description)

and does hereby waive and release any right to mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, except for disputed claims for extra work in the amount of \$ \_\_\_\_\_.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project.

Dated: \_\_\_\_\_

(Company name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

(Each unconditional waiver shall contain the following language in type at least as large as the largest type otherwise on the document.)

Notice:

This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

## STOP NOTICES

### **33-1051. Definitions**

In this article, unless the context otherwise requires:

1. "Bonded stop notice" means a stop notice that is given to any construction lender and that is accompanied by a bond executed solely by one or more surety companies authorized to transact surety business in this state pursuant to title 20, chapter 2, article 1 in the penal sum equal to one hundred twenty-five percent of the amount of the claim on the condition that if the owner, original contractor or construction lender recovers judgment in an action brought on a verified claim or on the lien filed by the claimant, the claimant would have sufficient monies to pay all costs and damages that the owner, original contractor or construction lender may sustain by reason of the stop notice claim or the lien, not exceeding the amount specified in the bond.
2. "Construction lender" means any mortgagee or beneficiary under a deed of trust lending funds all or a portion of which defray the cost of the construction, alteration, repair or improvement or any assignee or successor in interest of either, or any escrow holder or other party holding any monies furnished or to be furnished by the owner or any other person as a source from which to pay construction costs.
3. "Original contractor" means any contractor who has a direct contractual relationship with the owner.
4. "Stop notice" means a written notice that is signed and verified by the claimant or its agent and that states in general terms all of the following:
  - (a) A description of the labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished by the claimant.
  - (b) The name of the person to or for whom the labor, professional services, materials, machinery, fixtures or tools were furnished or agreed to be furnished.
  - (c) The amount in value of the labor, professional services, materials, machinery, fixtures or tools already furnished and the total amount agreed to be furnished.
  - (d) The amount, if any, of payment received by the claimant for the labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished.
  - (e) The name and address of the claimant.

### **33-1052. Stop notice: defect in form**

A stop notice is not invalid by reason of any defect in form if it is sufficient to substantially in form the owner of the information required by this article.

### **33-1053. Applicability**

This section and sections 33-1054 through 33-1067 apply only to private work. Private work does not include dwellings of owner-occupants as defined in section 33-1002.

### **33-1054. Persons authorized; notice to owner: failure to serve notice after demand**

Any person entitled to record a claim of lien under article 6 of this chapter, other than the original contractor, may give to the owner a stop notice. Any person entitled to give a stop notice who fails to serve three stop notices within thirty days after a written demand from the owner forfeits the right to any stop notice on the work described in the demand. A written demand from the owner shall be sent by registered or certified mail, postage prepaid, shall be addressed to that person at any place where that person maintains an office or conducts business and shall include the following language in bold-faced type that is at least as large as the largest type that otherwise appears on the document: "demand for service of stop notice pursuant to A.R.S. §§ 33-1054, 33-1055".

### **33-1055. Persons authorized; election by construction lender to withhold monies; copy of bond; recovery limits**

A. Any person entitled to record a claim of lien under article 6 of this chapter may give to a construction lender a stop notice or a bonded stop notice before the expiration of the time within which that person's lien shall be recorded under section 33-993. Any person entitled to give a stop notice who fails to serve a stop notice within thirty days after a written demand from the construction lender forfeits the right to any stop notice on the work described in the demand. A written demand from the owner shall be sent by registered or certified mail, postage prepaid, shall be addressed to that person at any place where that person maintains an office or conducts business and shall include the following language in bold-faced type that is at least as large as the largest type that otherwise appears on the document: "demand for service of stop notice pursuant to A.R.S. section 33-1055".

B. In the case of a stop notice or bonded stop notice filed by the original contractor or by a subcontractor, the original contractor or subcontractor is only entitled to recover on its own stop notice or bonded stop notice the net amount due the original contractor or subcontractor after deducting both of the following:

1. The stop notice claims of all subcontractors or material suppliers who have filed bonded stop notices for work done on behalf of the original contractor or subcontractor.

2. The amount of any payment already received as described in the stop notice or bonded stop notice.

C. A bonded stop notice shall not require the construction lender to withhold more than the net amount due for labor, services, materials, machinery, fixtures or tools. Notwithstanding any other law, a construction lender is not liable for the failure to withhold more than this net amount due on receipt of a bonded stop notice.

### **33-1056. Effective notice**

A. The stop notice shall be delivered to the owner personally or left at the owner's residence with a person of suitable age and discretion or the owner's place of business. If the notice is served on a construction lender who holds construction monies and who maintains branch offices, it is not effective against the construction lender unless it is given to or served on the manager or other responsible officer or person at the office or branch that administers or holds the construction monies. Any stop notice may be served by certified mail with the same effect as by personal service.

B. Service of a stop notice or bonded stop notice is effective only if the claimant complies with all of the following:

1. Gives any preliminary twenty day notice in accordance with sections 33-992.01 and 33-992.02 only as required by those sections.
2. Serves the stop notice or bonded stop notice before the expiration of the time within which to record a claim of lien under section 33-993.

### **33-1057. Withholding of money by owner; payment bond**

A. On receipt of a stop notice pursuant to section 33-1054, the owner shall withhold from the original contractor or from any person acting under the original contractor's authority and to whom labor, professional services, materials, machinery, fixtures or tools have been furnished or agreed to be furnished sufficient monies due or to become due to that contractor to answer that claim and any claim of lien that may be recorded for that claim unless a payment bond has been recorded pursuant to section 33-1003. If a payment bond is recorded, the owner may withhold the monies.

- B. If the owner elects not to withhold pursuant to a stop notice by reason of a payment bond having been recorded in accordance with section 33-1003, the owner within thirty days after receipt of the stop notice shall give a written notice to the claimant at the address shown in the stop notice that the bond has been recorded and shall furnish to the claimant a copy of that bond.

### **33-1058. Withholding monies by construction lenders; payment bond**

- A. On receipt of a stop notice pursuant to section 33-1055, the construction lender may and on receipt of a bonded stop notice shall withhold from the borrower or other person to whom it or the owner may be obligated to make payments or advances out of the construction fund sufficient monies to answer the claim and any claim of lien that may be recorded. If a payment bond has previously been recorded in accordance with section 33-1003, the construction lender shall withhold monies pursuant to a bonded stop notice filed by the original contractor and, at its option, may withhold monies pursuant to a stop notice or bonded stop notice given by anyone other than the original contractor.
- B. The construction lender may elect not to withhold pursuant to a bonded stop notice if a payment bond has been recorded in accordance with section 33-1003. When giving the construction lender the stop notice or bonded stop notice, if the claimant makes a written request for notice of the election, accompanied by a preaddressed, stamped envelope, the construction lender shall furnish to the claimant a copy of the bond within thirty days after making the election. A lender is not liable for a failure to furnish a copy of the bond if the failure was not intentional and resulted from a bona fide error, if the lender maintains reasonable procedures to avoid such an error and if the error was corrected no more than twenty days after the date on which the error was discovered.

### **33-1059. Assignment of monies: effect**

- A. Whether made before or after a stop notice or bonded stop notice is given to a construction lender, no assignment by the owner or contractor of construction monies takes priority over the stop notice or bonded stop notice, and the assignment has no effect as to the rights of claimants who give the stop notice or bonded stop notice.
- B. Any allocation or disbursement of any sum from construction monies by a construction lender for the payment of loan fees, interest or other charges to the construction lender is not an assignment under subsection A and is not subject to

any stop notice or bonded stop notice given to the construction lender.

### **33-1060. Pro rata distribution of monies**

If monies withheld or required to be withheld pursuant to any stop notice or bonded stop notice are insufficient to pay in full the valid claims of all persons who made claims, the monies withheld or required to be withheld shall be distributed among those persons in the same ratio that their respective claims bear to the aggregate of all such valid claims. This pro rata distribution shall be made among the persons entitled to a share without regard to the order of time in which their respective notices were given or their respective actions, if any, were filed.

### **33-1061. False notice**

Any person who wilfully gives a false stop notice or bonded stop notice or wilfully includes in the notice any labor, professional services, materials, machinery, fixtures or tools not furnished for the property described in that notice forfeits all right to participate in the pro rata distribution of monies, forfeits all right to any lien under article 6 of this chapter and is subject to penalties under section 33-420.

### **33-1062. Release of stop notice or bonded stop notice**

An owner, a construction lender or any original contractor or subcontractor who disputes any stop notice or bonded stop notice may file with the person on whom notice was served a release bond. The release bond shall be executed in a penal sum equal to one hundred twenty-five per cent of the amount claimed in the notice, conditioned for the payment of any amount that does not exceed the penal obligation of the bond and that the claimant may recover on the claim, together with any reasonable expenses including attorney fees awarded by the court. A copy of the release bond shall be served on the stop notice claimant in the same manner required for the delivery of a stop notice. On the filing and service of the release bond, the monies withheld in response to the stop notice or bonded stop notice shall be released promptly.

### **33-1063. Commencement of actions: limitations**

- A. An action against the owner or construction lender to enforce payment of the claim stated in the stop notice or bonded stop notice may be commenced at any time after ten days from the date of the service of the stop notice on either the owner or construction lender and shall be commenced not later than three months after the expiration of the period within which claims of lien shall be recorded pursuant to section 33-993, unless all the parties required to be parties to the claim stipulate in writing to an extension of the time to bring an action of not more than an additional three months.

- B. Monies shall not be withheld by reason of any stop notice for longer than the three month period prescribed in subsection A of this section unless an action is commenced. If an action is not commenced, the notice ceases to be effective and the monies shall be paid or released to the contractor or other person to whom they are due. Notice of commencement of any action shall be given within five days after commencement to the same persons and in the same manner as provided for service of a stop notice or bonded stop notice.

### **33-1064. Dismissal or judgment**

On dismissal of an action to enforce a stop notice or bonded stop notice, unless expressly stated to be without prejudice, or on a judgment rendered against the claimant, the stop notice or bonded stop notice ceases to be effective and the monies withheld shall be paid or released to the person to whom they are due.

### **33-1065. Consolidation of actions**

Any person who has given stop notices or bonded stop notices may join in the same action, and when separate actions are commenced, the court may consolidate them. On motion of the owner or construction lender, the court shall require all claimants to the monies withheld pursuant to stop notices and bonded stop notices to be joined in one action and the respective rights of all parties shall be adjudicated in that action.

### **33-1066. Attorney fees**

In any action against an owner or construction lender to enforce payment of a claim stated in a bonded stop notice, the prevailing party shall be awarded reasonable attorney fees from the party held liable by the court for payment of the claim.

### **33-1067. Interest**

If the plaintiff is the prevailing party in any action against an owner or construction lender to enforce payment of a claim stated in a bonded stop notice, any amount awarded on the claim shall include interest at the legal rate computed from the date the bonded stop notice is served on the owner or construction lender.

## MILLER ACT

MILLER ACT - 40 USC Sec. 270a and 270 b, as Amended by Construction Industry Payment Protection Act of 1999

### **Sec 270a. Bonds of contractors of public buildings or works**

#### (a) Type of bonds required

Before any contract for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

- (1) A performance bond with a surety or sureties satisfactory to the .officer awarding such contract, and in such amount as he shall deem adequate, for the protection of the United States.
- (2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in - said contract for the use of each such person. The amount of the payment bond shall be equal to the total amount payable by the terms of the contract unless the contracting officer awarding the contract makes a written determination supported by specific findings that a payment bond in that amount is impractical, in which case the amount of the payment bond shall be set by the contracting officer. In no case shall the amount of the payment bond be less than the amount of the performance bond.

#### (b) Waiver of bonds for contracts performed in foreign countries

The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

#### (c) Authority to require additional bonds

Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to those or in cases other than the cases specified in subsection (a) of this section.

#### (d) Coverage for taxes in performance bond

Every performance bond required under this section shall specifically provide coverage

for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under title.26. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.

(Aug. 24, 1935, ch. 642, Sec. 1, 49 Stat. 793; Pub. L. 89-719, title I, Sec. 105(b), Nov. 2, 1966, 80 Stat. 1139; Pub. L. 95-585, Nov. 2, 1978, 92 Stat. 2484; Pub. L. 99-514Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103-355, title IV, Sec. 4104(b)(l)(B), Oct.13, 1994, 108 Stat. 3342; Pub. L. 106-49, Sec. 2(a), Aug. 17, 1999, 113 Stat. 231.)

### **Sec.270b. Rights of persons furnishing labor or material**

#### (a) Right to sue on payment bond

Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under sections 270a to 270d-l of this title and who has not been paid in full therefore before the expiration of a period of ninety days after the day. on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him: Provided, however, That any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by any means which provides written, third-party verification of delivery.

(FOOTNOTE 1) to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

(FOOTNOTE 1) So in original. The period probably should not appear.

(b) Civil action; jurisdiction; statute of limitations; costs and expenses

Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The United States shall not be liable for the payment of any costs or expenses of any such suit.

(c) Nonwaiver of rights

Any waiver of the right to sue on the payment bond required by sections 270a to 270d-1 of this title shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(Aug. 24, 1935, ch. 642, Sec. 2, 49 Stat. 794; Pub. L. 86-135, Sec. 1, Aug. 4, 1959, 73 Stat. 279; Pub. L. 106-49, Sec. 2(b), (c), Aug. 17, 1999, 113 Stat. 231.)

## ARIZONA'S "LITTLE MILLER ACT"

### **34-221. Contract with successful bidder: payments to contractor; security: recovery of damages by contractor for delay: progress payments**

- A. The agent shall enter into a contract with the lowest responsible bidder whose proposal is satisfactory, except that in counties with a population of more than one million persons according to the most recent United States decennial census, in determining the lowest responsible bidder under this section, the board of supervisors may consider, for no more than five projects, the time of completion proposed by the bidder, the value over time of completed services and facilities and the value over time of interrupted services if the board determines that this procedure will serve the public interest by providing a substantial fiscal benefit or that the use of the traditional awarding of contracts is not practicable for meeting desired construction standards or delivery schedules and if the formula for considering the time of completion is specifically stated in the bidding information.
- B. The terms of a contract entered into pursuant to subsection A shall include the following items:
1. A surety company bond or bonds as required under the provisions of this article.
  2. The owner by mutual agreement may make progress payments on contracts of less than ninety days and shall make monthly progress payments on all other contracts as provided for in this paragraph. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under such contract may include payment for material and equipment, but to insure the proper performance of such contract, the owner shall retain ten per cent of the amount of each estimate until final completion and acceptance of all material, equipment and work covered by the contract. An estimate of the work submitted shall be deemed approved and certified for payment after seven days from the date of submission unless before that time the owner or owner's agent prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The owner may withhold an amount from the progress payment sufficient to pay the expenses the owner reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the owner on submission to any person designated by the owner for the submission, review or approval of the estimate of the work.

3. When the contract is fifty per cent completed, one-half of the amount retained including any securities substituted under paragraph 5 shall be paid to the contractor upon the contractor's request provided the contractor is making satisfactory progress on the contract and there is no specific cause or claim requiring a greater amount to be retained. After the contract is fifty per cent completed, no more than five per cent of the amount of any subsequent progress payments made under the contract may be retained providing the contractor is making satisfactory progress on the project, except that if at any time the owner determines satisfactory progress is not being made ten per cent retention shall be reinstated for all progress payments made under the contract subsequent to the determination.
4. Upon completion and acceptance of each separate building, public work or other division of the contract on which the price is stated separately in the contract, except as qualified in paragraph 5, payment may be made in full, including retained percentages thereon, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the job shall be taken into consideration in determining the estimated value by the architect or engineer.
5. Ten percent (10%) of all estimates shall be retained by the agent as a guarantee for complete performance of the contract, to be paid to the contractor within sixty days after completion or filing notice of completion of the contract. Retention of payments by a purchasing agency longer than sixty days after final completion and acceptance requires a specific written finding by the purchasing agency of the reasons justifying the delay in payment. No purchasing agency may retain any monies after sixty days which are in excess of the amount necessary to pay the expenses the purchasing agency reasonably expects to incur in order to pay or discharge the expenses determined by the purchasing agency in the finding justifying the retention of monies. In lieu of the retention provided in this section, the agent shall, at the option of the contractor, accept as a substitute an assignment of time certificates of deposit of banks licensed by this state, securities of or guaranteed by the United States of America, securities of this state, securities of counties, municipalities and school districts within this state or shares of savings and loan institutions authorized to transact business in this state, in an amount equal to ten per cent of all estimates which shall be retained by the agent as a guarantee for complete performance of the contract. In the event the agent accepts substitute security as described in this paragraph for the ten per cent retention, the contractor shall be entitled to receive all interest or income earned by such security as it accrues and all such security in lieu of retention shall be returned to the contractor by the agent within sixty days after final completion and acceptance of all material, equipment and work covered by the contract if the contractor has furnished the agent satisfactory receipts for all labor and material billed and waivers of liens from

any and all persons holding claims against the work. In no event shall the agent accept a time certificate of deposit of a bank or shares of a savings and loan institution in lieu of the retention specified unless accompanied by a signed and acknowledged waiver of the bank or savings and loan association of any right or power to set off against either the agent or the contractor in relationship to the certificates or shares assigned.

6. In any instance where the agent has accepted substitute security as provided in paragraph 5, any subcontractor undertaking to perform any part of such public work shall be entitled to provide substitute security to the contractor upon terms and conditions similar to those described in paragraph 5, and such security shall be in lieu of any retention under the subcontract.
- C. No contract for construction may materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment required to be included in the contract under subsection B.
  - D. The contract shall be signed by the agent and the contractor.
  - E. A contract for the procurement of construction shall include a provision which provides for negotiations between the agent and the contractor for the recovery of damages related to expenses incurred by the contractor for a delay for which the agent is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract. This section shall not be construed to void any provision in the contract which requires notice of delays, provides for arbitration or other procedure for settlement or provides for liquidated damages.
  - F. The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor or subcontractor on account of the work performed by subordinate subcontractors, to the extent of each such subcontractor's interest therein, except that no contract for construction may materially alter the rights of any contractor, subcontractor or material Supplier to receive prompt and timely payment as provided under this section. Such payments to subcontractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the contractor or subcontractor of payments received for work performed on a contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the registrar of contractors. The subcontractor or material supplier shall notify the registrar of contractors and the purchasing agency in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

- G. A subcontractor may notify the purchasing agency in writing requesting that the subcontractor be notified by the purchasing agency in writing within five days from payment of each progress payment made to the contractor. The subcontractor's request remains in effect for the duration of the subcontractor's work on the project.
- H. Nothing in this chapter prevents the contractor or subcontractor, at the time of application and certification to the owner or contractor, from withholding such application and certification to the owner or contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention that does not exceed the actual percentage retained by the owner.
- I. If any payment to a contractor is delayed after the date due interest shall be paid at the rate of one per cent per month or fraction of a month on such unpaid balance as may be due.
- J. If any periodic or final payment to a subcontractor is delayed by more than seven days after receipt of the periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay a subordinate subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or a fraction of a month on such unpaid balance as may be due.

**34-222. Surety bond required; suit on bond: limitations**

- A. Except where specifically exempted by statute, before any contract is executed with any person for the construction, alteration, or repair of any public building, a public work or improvement of any county, city or town, or officer, board or commission thereof, and irrigation, power, electrical, drainage and flood control districts, tax levying public improvement districts, and county or city improvement districts, the person shall furnish to the agent entering into such contract the following bonds which shall become binding upon the award of the contract to such person, who, for purposes of this article, means "contractor":
  - 1. A performance bond in an amount equal to the full contract amount conditioned upon the faithful performance of the contract in accordance with

plans, specifications and conditions thereof. Such bond shall be solely for the protection of the public body awarding the contract.

2. A payment bond in an amount equal to the full contract amount solely for the protection of claimants supplying labor or materials to the contractor or his subcontractors in the prosecution of the work provided for in such contract.
- B. Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of the judgment such reasonable attorneys' fees as may be fixed by a judge of the court.
  - C. Notwithstanding any other statute, each such bond shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. The bonds shall not be executed by an individual surety or sureties, even if the requirements of section 7-101 are satisfied. The bonds shall be payable to the public body concerned.
  - D. Such bonds shall be filed in the office of the department, board, commission, institution, agency or other contracting body awarding the contract.
  - E. It shall be illegal for the invitation for bids, or any person acting or purporting to act on behalf of the contracting body, to require that such bonds be furnished by a particular surety company, or through a particular agent or broker.
  - F. The conditions and provisions in the payment bond regarding the surety's obligations shall follow the following form:

Now, therefore, the condition of this obligation is such, that if the principal promptly pays all monies due to all persons supplying labor or materials to the principal or the principal's subcontractors in the prosecution of the work provided for in the contract, this obligation is void. Otherwise it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of title 34, chapter 2, article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of title 34, chapter 2, article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

- G. The conditions and provisions in the performance bond regarding the surety's obligations shall follow the following form:

Now, therefore, the condition of this obligation is such, that if the principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice to the surety, and during the life of any guaranty required under the contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

Provided, however, that this bond is executed pursuant to the provisions of title 34 chapter 2, article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of title 34, chapter 2, article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

- H. If the prime contractor specifications require any persons supplying labor or materials in the prosecution of the work to furnish payment or performance bonds, these bonds shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the director of the department of insurance pursuant to title 20, chapter 2, article 1. Notwithstanding the provisions of any other statute, the bonds shall not be executed by an individual surety or sureties, even if the requirements of section 7-101 are satisfied.
- I. All bonds given by a contractor and surety, pursuant to the provisions of this article, regardless of their actual form, will be deemed by law to be the form required and set forth in this article and no other.

### **34-223. Payment bond provisions**

- A. Every claimant who has furnished labor or material in the prosecution of the work provided for in such contract in respect of which a payment bond is furnished under the provisions of section 34-222, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by the claimant or material was furnished or supplied by the claimant for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute such action to final judgment for the sum or sums justly due the claimant, and have execution thereon, provided however that any such claimant having a direct contractual relationship with a

subcontractor of the contractor furnishing such payment bond but no contractual relationship express or implied with such contractor shall have a right of action upon such payment bond upon giving the contractor only a written preliminary twenty day notice, as provided for in section 33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections E and H, and upon giving written notice to such contractor within ninety days from the date on which such claimant performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied for whom the labor was done or performed. Such notice shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business, or at the contractor's residence.

- B. Every suit instituted under this section shall be brought in the name of the claimant, but no such suit shall be commenced after the expiration of one year from the date on which the last of the labor was performed or materials were supplied by the person bringing this suit.
- C. The contracting body and the agent in charge of its office shall furnish to anyone making written application therefore who states that it has supplied labor or materials for such work, and payment therefore has not been made, or that it is being sued on any such bond, that it is the surety thereon, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution and delivery of the original. Applicants shall pay for such certified copies such reasonable fees as the contracting body or the agent in charge of its office fixes to cover the actual cost of preparation thereof.

## United States Code, Title 40

### **Sec. 270a. - Bonds of contractors of public buildings or works**

#### (a) Type of bonds required

Before any contract for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond with a surety or sureties satisfactory to the officer awarding such contract, and in such amount as he shall deem adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. The amount of the payment bond shall be equal to the total amount payable by the terms of the contract unless the contracting officer awarding the contract makes a written determination supported by specific findings that a payment bond in that amount is impractical, in which case the amount of the payment bond shall be set by the contracting officer. In no case shall the amount of the payment bond be less than the amount of the performance bond.

#### (b) Waiver of bonds for contracts performed in foreign countries

The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

#### (c) Authority to require additional bonds

Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section.

#### (d) Coverage for taxes in performance bond

Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such

bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under title 26. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.

### **Sec.270b. - Rights of persons furnishing labor or material**

#### (a) Right to sue on payment bond

Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under sections 270a to 270d-1 of this title and who has not been paid in full therefore before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him: Provided, however, that any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contract or within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by any means which provides written, third-party verification of delivery to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

#### (b) Civil action; jurisdiction; statute of limitations; costs and expenses

Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The United States shall not be liable for the payment of any costs or expenses of any such suit.

(c) Nonwaiver of rights

Any waiver of the right to sue on the payment bond required by sections 270a to 270d-1 of this title shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

**Sec. 270c. - Right of person furnishing labor or material to copy of bond**

The department secretary or agency head of the contracting agency is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the department secretary or agency head of the contracting agency fixes to cover the cost of preparation thereof.

**Sec.270d. - "Person" defined**

The term "person" and the masculine pronoun as used in sections 270a to 270d-1 of this " title shall include all persons whether individuals, associations, co-partnerships, or corporations.

**Sec. 270d-1. - Waiver of sections 270a to 270d with respect to small contracts**

Sections 270a to 270d of this title do not apply to a contract in an amount that is not greater than \$100 000.

**Sec.270e. - Waiver of sections 270a to 270d-1with respect to Army, Navy, Air Force, or Coast Guard contracts**

The Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Transportation may waive sections 270a to 270d-1 of this title with respect to cost-plus-a-fixed fee and other cost-type contracts for the construction, alteration, or repair of any public building or public work of the United States and with respect to contracts for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, munitions, materiel, or supplies of any kind or nature for the Army, Navy, Air Force, or Coast Guard, respectively, regardless of the terms of such contracts as to payment or title.

**Sec. 270f. - Waiver of sections 270a to 270d-1 with respect to transportation contracts**

The Secretary of Transportation may waive sections 270a to 270d-1 of this title, with respect to contracts for the construction, alteration, or repair, of vessels of any kind or nature, entered into pursuant to sections 1535 and 1536 of title 31, the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), or the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1735 et seq.), regardless of the terms of such contracts as to payment or title.

# **LIEN AND BOND LAW**

**Use It or Lose It**

## **PART V: FORMS**

## BOND & LIEN CLAIM INFORMATION

1. Name of project \_\_\_\_\_
2. Location of project \_\_\_\_\_
3. Original contract amount \_\_\_\_\_
4. Was there an increase in the contract amount of more than 20%? If so, a new preliminary notice was sent on \_\_\_\_\_, which was within 20 days of the increase of the contract.
5. Our contract for the project is with \_\_\_\_\_
6. Our contract for the project is: \_\_\_\_\_ written \_\_\_\_\_ verbal
7. If there is no written contract, it is a verbal contract and the terms are  
\_\_\_\_\_
8. General contractor for the project is \_\_\_\_\_
9. The project is a \_\_\_\_\_ private \_\_\_\_\_ public project.
10. Owner of the project is \_\_\_\_\_
11. Lender for the project is \_\_\_\_\_
12. We first delivered material or performed labor on \_\_\_\_\_
13. A preliminary notice was sent on \_\_\_\_\_ to:  
Owner \_\_\_\_\_  
Contractor \_\_\_\_\_  
Lender \_\_\_\_\_

## BOND ISSUES

1. The last done on which unpaid material was delivered or labor performed was \_\_\_\_\_
2. If you do not have a contract with the General Contractor on a bonded public project, you must send a written demand for payment to the General Contractor before ninety (90) days after the last unpaid labor performed or material supplied. The 90 day notice was sent \_\_\_\_\_
3. On a bonded public project, suit must be filed against surety and General Contractor before one (1) year of last supplying labor or material. One year is \_\_\_\_\_
4. If the project was a private project, was a Payment Bond recorded for the project?  
\_\_\_\_\_
5. A request for the Payment Bond was made on \_\_\_\_\_ to Owner \_\_\_\_\_, General Contractor \_\_\_\_\_
6. If the project has a Private Payment Bond, the bond says:
  - A. Covered claimants are: \_\_\_\_\_
  - B. When is notice required? \_\_\_\_\_ and to whom? \_\_\_\_\_
  - C. When must suit be filed? \_\_\_\_\_

## LIEN ISSUES

1. Completion means the earliest of the following events:
  - A. Thirty days after final inspection and written final acceptance by the governmental body which issued the building permit for the building, structure or improvement.
  - B. Cessation of labor for a period of sixty consecutive days, except when such cessation of labor is due to a strike, shortage of materials or act of God.
2. Date of completion for the project was \_\_\_\_\_
3. A notice of completion for the project was \_\_\_ was not \_\_\_ recorded.  
If recorded, the notice of completion was recorded on \_\_\_\_\_ and was \_\_\_ was not \_\_\_ mailed by certified or registered mail within 15 days of recording.
4. If a notice of completion was recorded, and mailed within 15 days of recording, the lien must be recorded by \_\_\_\_\_, or 60 days from the recording date.
5. Notice and claim of lien was recorded \_\_\_\_\_
6. Duplicate copies of the lien were served on the Owner on \_\_\_\_\_
7. For a lien, suit must be filed six (6) months after recording the lien. Six (6) months is \_\_\_\_\_

**ARIZONA PRELIMINARY TWENTY DAY LIEN NOTICE**

In accordance with Arizona Revised Statutes section 33-992.01 this is not a lien. This is not a reflection on the integrity of any contractor or subcontractor.

The name and address of the owner or reputed owner are:

This preliminary lien notice has been completed by (name and address of claimant):

Date: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

The name and address of the original contractor are:

You are hereby notified that the claimant has furnished or will furnish labor, professional

services, materials, machinery, fixtures or tools of the following general description:

The name and address of any lender or reputed lender and assigns are:

In the construction, alteration or repair of the building, structure or improvement located at:

The name and address of the person with whom the claimant has contracted are:

And situated upon that certain

lot(s) or parcel(s) of land in \_\_\_\_\_ County, Arizona,

described as follows:

An estimate of the total price of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished is: \$ \_\_\_\_\_

(The following statement shall be in bold-faced type.)



**Notice to Property Owner**

**If bills are not paid in full for the labor, professional services, materials, machinery, fixtures or tools furnished, or to be furnished, a mechanic’s lien leading to the loss, through court foreclosure proceedings, of all or part of your property being improved may be placed against the property. You may wish to protect yourself again this consequence by either:**

- 1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes section 33-1008, subsection D, paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.**
- 2. Requiring your contractor to furnish an unconditional waiver and release pursuant to Arizona revised Statutes section 33-1008, subsection D, paragraphs 2 and 4 signed by the person or firm giving you this notice after you make payment to your contractor.**
- 3. Using any other method or device that is appropriate under the circumstances.**

(The following language shall be in type at least as large as the largest type otherwise on the document.)

Within ten days of the receipt of this preliminary twenty days notice the owner or other interested party is required to furnish all information necessary to correct any inaccuracies in the notice pursuant to Arizona Revised Statutes section 33-992.01, subsection I or lose as a defense any inaccuracy of that information.

Within ten days of the receipt of this preliminary twenty day notice if any payment bond has been recorded in compliance with Arizona Revised Statutes section 33-1003, the owner must provide a copy of the payment bond including the name and address of the surety company and bonding agent providing the payment bond to the person who has given the preliminary twenty day notice. In the event that the owner or other interested party fails to provide the bond information within that ten day period, the claimant shall retain lien rights to the extent precluded or prejudiced from asserting a claim again the bond as a result of not timely receiving the bond information.

Dated: \_\_\_\_\_

(Company Name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(Acknowledgment of receipt language from Arizona Revised Statutes section 33-992.02 shall be inserted here.)

**ACKNOWLEDGMENT OF RECEIPT OF PRELIMINAY TWENTY DAY LIEN NOTICE**

This acknowledges receipt on \_\_\_/\_\_\_/20\_\_\_ (date received) of a copy of the Preliminary Twenty Day Lien Notice at \_\_\_\_\_  
(address where notice received.)

Acknowledged on \_\_\_/\_\_\_/20\_\_\_

\_\_\_\_\_  
Signature of person acknowledging receipt,  
with title if acknowledgment is made on  
behalf of another person



## **AFFIDAVIT OF SERVICE OF PRELIMINARY TWENTY DAY NOTICE**

Proof that the preliminary twenty day notice required by section 33-992.01 was given in accordance with section 33-992.01, subsection F shall be made as follows:

1. If given by mail, by an acknowledgment of receipt of the notice in a form substantially as follows:

---

*Signature of sender*

## ACKNOWLEDGMENT OF RECEIPT OF PRELIMINARY TWENTY DAY NOTICE

This acknowledges receipt on (insert date) of a copy of the preliminary twenty day notice at \_\_\_\_\_  
(insert address)

Date: \_\_\_\_\_  
(Date this acknowledgment is executed)

\_\_\_\_\_  
*Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person"*

2. If a person to whom the notice is served pursuant to section 33-992.01, subsection F fails to complete the acknowledgment or fails to complete and return the acknowledgment within thirty days from the date of mailing, proof of mailing may be made by affidavit of the person making the mailing, showing the time, place and manner of mailing and facts showing that such service was made in accordance with section 33-992.01. The affidavit shall show the name and address of the person to whom a copy of the preliminary twenty day notice was mailed, and, if appropriate, the title or capacity in which he was given the notice. If mailing was made by first class mail sent with a certificate of mailing, the certificate of mailing shall be attached to the affidavit. If the mailing was by certified or registered mail, the receipt of certification or registration shall be attached to the affidavit.

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

On receipt by the undersigned of a check from \_\_\_\_\_ (*maker of check*) in the sum of \$ \_\_\_\_\_ (*amount of check*) payable to \_\_\_\_\_ (*payee or payees of check*) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of \_\_\_\_\_ (*owner*) located at \_\_\_\_\_ (*job description*) to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_ (*person with whom undersigned contracted*), through \_\_\_\_\_ (*date*) only and does not cover any retention, pending modifications and changes or items furnished after that date. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date \_\_\_\_\_

(Company name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)



**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

The undersigned has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ for all labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_ (*person with whom undersigned contracted*) on the job of \_\_\_\_\_ (*owner*) located at \_\_\_\_\_ (*job description*) and does hereby release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the above referenced project to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_ (*person with whom undersigned contracted*) through \_\_\_\_\_ (*date*) only and does not cover any retention, pending modifications and changes or items furnished after that date.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Dated: \_\_\_\_\_

(Company name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

(Each unconditional waiver shall contain the following language, in type at least as large as the largest type otherwise on the document:)

Notice:

This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.



**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

On receipt by the undersigned of a check from \_\_\_\_\_ (*maker of check*) in the sum of \$ \_\_\_\_\_ (*amount of check*) payable to \_\_\_\_\_ (*payee or payees of check*) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of \_\_\_\_\_ (*owner*) located at \_\_\_\_\_ (*job description*). This release covers the final payment to the undersigned for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_ (*person with whom undersigned contracted*), except for disputed claims in the amount of \$ \_\_\_\_\_. Before any recipient of this document relies on it, the person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Dated: \_\_\_\_\_

(Company name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)



**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

The undersigned has been paid in full for all labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_ (*person with whom undersigned contracted*), on the job of \_\_\_\_\_ (*owner*) located at \_\_\_\_\_ (*job description*) and does hereby waive and release any right to mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, except for disputed claims for extra work in the amount of \$ \_\_\_\_\_.

The undersigned warrants that he either has already paid or will use the monies he receives from this final payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project.

Dated: \_\_\_\_\_

(Company name)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Title)

(Each unconditional waiver shall contain the following language in type at least as large as the largest type otherwise on the document:)

Notice:

This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.



## NOTICE OF COMPLETION

Notice is hereby given that:

1. The undersigned is owner of the interest or estate stated below in the property hereinafter described, or the undersigned is the owner's agent.

2. The full name of the undersigned is \_\_\_\_\_.

3. The full address of the undersigned is \_\_\_\_\_.

4. The nature of the interest or estate of the owner is: in fee.

\_\_\_\_\_ (If other than fee, strike "In Fee" and insert, for example, "Purchaser Under Contract of Purchase" or "Lessee".)

5. The full names and full addresses of all persons, if any, who hold interest or estate with the undersigned such as joint tenants or tenants in common are:

Name Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. The full names and full addresses of the predecessors in interest of the undersigned, if the property was transferred after the beginning of the work or improvement:

Name Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. The nature of the improvements to the real property

\_\_\_\_\_.

8. The work of improvement on the property hereinafter described was completed in accordance with the definition of completion in Arizona Revised Statutes section 33-993, subsection C. (Fill in the appropriate completion date as defined in Arizona Revised Statutes section 33-993, subsection C.)

(a) - Date \_\_\_\_\_

(thirty days after written final acceptance by governmental body)

(b) - Date \_\_\_\_\_

(sixty days after cessation of labor)

9. The name of the original contractor, if any, for such work or improvement is

\_\_\_\_\_.

(if no contractor, insert "none")

10. The street address of the property is \_\_\_\_\_

\_\_\_\_\_  
(include both address and city with zip code)

11. The legal description of property described above

\_\_\_\_\_  
(attach exhibit if necessary)

Verification

I, the undersigned, certify that I am the owner, the owner's agent for the property or another interested party in the property, described in the above notice, or I certify that I am the original contractor of the improvements to the real property described in the above notice. I have read the foregoing notice and know and understand the contents thereof, and the facts stated therein are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, Arizona.  
(date) (place where signed)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(personal signature)

\_\_\_\_\_  
(title)

(Acknowledgement)

Each notice of completion shall contain the following language in type at least as large as the largest type that otherwise appears on the document:

In order to shorten the lien period pursuant to Arizona Revised Statutes section 33-993, subsection A, a copy of the notice of completion and a written statement of the date of recording and the county recorder's record location information shall be served by certified or registered mail, postage prepaid, to the owner, the original contractor and all persons from whom the person recording this notice has previously received a preliminary twenty day notice as prescribed by Arizona Revised Statutes section 33-993, subsection I.

**NOTICE AND CLAIM OF LIEN**

<p>Claimant: <i>(Name and Address)</i></p>  <p>Property Owner: <i>(Name and Address)</i></p>	<p>Property: The real property upon which the Project was constructed is the following described parcel(s) of land, and includes any and all structures and improvements located thereon, to which are to be charged with this Lien (the "Subject Property"):</p> <p>Address:</p>  <p>Legal Description:</p>  <p>The Project Name and/or Reference is:</p>
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<p>The Claimant furnished labor, materials, services, tools and/or equipment of the following general description at the Property (Services):</p>  <p>The party who hired the Claimant to perform the Services at the Property is (the "Hiring Party"): <i>(Name and Address)</i></p>	<p>Amount of Claim</p> <p>After deducting just offsets and credits, and accounting for all change orders, the amount demanded in this lien by the CLAIMANT is: \$ _____</p> <p>This amount shall accrue interest at the rate of 10.00% per annum as per A.R.S. §44-1201. Claimant shall be entitled to the fees for preparing this Lien, and foreclosing thereupon, as per A.R.S. § 33-995(E) and § 33- 998(B).</p>
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<p>The Contract The Claimant provided the Services to the Property pursuant to a:</p> <p><input type="checkbox"/> Written Contract <input type="checkbox"/> Oral Contract</p> <p>For written contracts, the terms of the same</p>	<p>Commencement Date: Claimant first furnished the Services to the Property on or around the following date: _____</p> <p>Completion Date: The completion of the project occurred on or about the following date: _____</p> <p>Preliminary Notice Date: A copy of the</p>
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<p>are available pursuant to a copy of the contract which is attached to this lien as Exhibit ____.</p> <p>For oral contracts, the terms of the same are described as follows:</p>	<p>Preliminary Notice(s) and the proof of its mailing is attached to this lien claim as Exhibit ____, the Claimant delivered the Preliminary Notice(s) as per ARS § 32-922.01 on the following date(s):</p>
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The CLAIMANT provides that at the request of the HIRING PARTY, it provides the SERVICES to the PROPERTY, and that the AMOUNT OF CLAIM is due and owing to the CLAIMANT in full, after providing all offsets and just credits. The CLAIMANT demands a lien on the PROPERTY and all improvements thereupon in the AMOUNT OF CLAIM. The CLAIMANT provides this Notice of Claim of Lien to the County Recorder's office in duplicate copies, the first to be recorded with the County, and the second to be returned to the CLAIMANT to be served upon the Owner(s) or Reputed Owner(s) as per statutory standards.

Signature of Claimant, and Verification

State of Arizona County of \_\_\_\_\_

I, \_\_\_\_\_, the undersigned, being of lawful age and being first duly sworn upon oath, do state that I am the Claimant named herein, or an authorized agent of the Claimant appointed for the purposes of signing and filing this Notice of Claim of Lien, and that I have read the foregoing Notice of Claim of Lien, know the contents thereof, and I have been provided and thereby have knowledge of the facts, and certify that based thereupon, upon my information and belief the foregoing is true and correct, and that I believe them to be true.

\_\_\_\_\_  
Claimant

Signed by Authorized and Disclosed Agent

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Sworn to and subscribed before me, undersigned Notary Public in and for the above listed State and County/Parish, on this \_\_\_\_\_, by \_\_\_\_\_, who is known to me, or satisfactorily proved to me, to be the person whose name is subscribed to this document, and who acknowledged that he/she executed this document in the capacity indicated for the principal named.

\_\_\_\_\_  
Notary Public

NOTE: A notice of lien requires attachment of a written contract, or, if no written contract exists, a description of the "terms, time given and conditions of the contract."The following provides the basic information contained in such a description when no written contract is available:

**NOTICE OF LIEN  
TERMS, TIME GIVEN AND CONDITIONS OF THE CONTRACT**

Date of Agreement: \_\_\_\_\_

Material or Labor to Be Supplied:

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Agreed Time for Delivery of Materials or Performance of Labor:

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Agree Payment Due for Materials or Labor

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Agreed Payment Terms:  
(How payment was to be made)

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**RELEASE OF RECORDED LIEN**

This Release of Lien is given this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_, to \_\_\_\_\_.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, \_\_\_\_\_ hereby releases and discharges that lien recorded by \_\_\_\_\_ in Docket \_\_\_\_\_, Page \_\_\_\_\_, Records of \_\_\_\_\_ County, Arizona on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with respect to the real property described on Exhibit A.

IN WITNESS WHEREOF, the undersigned executes this Release of Lien on the date stated above.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



**STOP NOTICE**

The following Stop Notice is given by the undersigned Claimant or its agent, and states as follows:

- a. A description of the labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished by the Claimant is:

\_\_\_\_\_  
\_\_\_\_\_

- b. The name of the person to or for whom the labor, professional services, materials, machinery, fixtures or tools or furnished or agreed to be furnished is:

\_\_\_\_\_  
\_\_\_\_\_

- c. The amount and value of the labor, professional services, materials, machinery, fixtures or tools already furnished is: \_\_\_\_\_ (\$ \_\_\_\_\_), and the total amount agreed to be furnished, including those already furnished is: \_\_\_\_\_ (\$ \_\_\_\_\_).

- d. The amount, if any, of payment received by the Claimant for the labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished is: \_\_\_\_\_ (\$ \_\_\_\_\_).

- e. The name and address of claimant is:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

STATE OF ARIZONA        )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_)

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



THIS LETTER MUST BE SENT BEFORE 90 DAYS FOLLOWING LAST DELIVERY OR WORK PERFORMED, EXCLUDING PUNCH LIST WORK (I.E., 90 DAYS OF SUBSTANTIAL COMPLETION OF YOUR WORK). SUIT MUST BE FILED WITHIN ONE YEAR OF LAST WORK OF DELIVERY.

**90-DAY NOTICE  
BOND CLAIM**

(Date)

(Name and Address for General Contractor)

Re: \_\_\_\_\_ Construction Project  
Notice of Claim and Demand for Payment

Dear \_\_\_\_\_:

Notice of claim is made by \_\_\_\_\_ for the following sums which are due and owing for materials furnished to \_\_\_\_\_ subcontractor for the construction of improvements on the above referenced bonded project.

\_\_\_\_\_ furnished materials in prosecution of the bonded work in connection with the general contract and a subcontract with the above referenced contractor.

Demand is hereby made upon you as the general contractor and your surety, for the payment of the following sums, together with interest:

The last date upon which material delivered, excluding punch list work, was \_\_\_\_\_.

Unless the amount due and owing is promptly paid, suit will be instituted upon the bond without further notice or demand.

Very truly yours,

C: Bonding Company

SENT BY REGISTERED MAIL THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.



Mesch Clark Rothschild also specializes in:

- Appeals
- Arbitration and Mediation
- Bankruptcy
- Civil Litigation
- Commercial Litigation
- Corporate and Business Law
- Employment and Labor Law
- Estate Planning
- Health Care Compliance
- Health Care Regulation and Litigation
- Personal Injury and Wrongful Death
- Probate Administration and Litigation
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- Reorganization

For further questions on the contents of this material or assistance in other areas of practice, contact us at:

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