

ARIZONA MECHANIC'S LIEN LAWS



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Due to changes in the law, court interpretations of the law and each unique situation being different, you should seek advise from your lawyer, if there is any question to the relevancy of this manual. Rapid Collection Systems, Inc. and RCS Preliminary Lien Service, Inc. will not be liable for the use of this material by any user of this manual.

INTRODUCTION

The mechanic's lien can be traced as far back as the Roman Empire. Under Roman civil law, architects, suppliers and laborers had preference over all other creditors. This protection ensured there would be no delay in building the Roman Empire.



The Arizona mechanic's lien law statutes were initially created by our legislators to protect builders against the property owner. Parties that supply labor, materials, professional services, fixtures or tools for the improvement of real property may assert a lien claim against an owner's property, provided they follow the necessary steps. This manual may be useful in understanding the steps you must take to protect your right

DEFINITION OF A LIEN

An Arizona mechanic's lien is a statutory lien recorded at the county where the work was performed, and evidences interest in the real property and improvements upon which construction work is performed.

PURPOSE

Think of the mechanic's lien as a pre-judgment remedy, which allows subcontractors, material suppliers and certain professionals to assert a claim against an owner's property, when there may not be contract privity.

WHO MAY LIEN?

Pursuant to ARS 33-981(A), the following may file a mechanic's lien:

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 whatever, 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.

Anyone who furnishes labor or materials to someone other than the owner or its agency is not entitled to a mechanic's lien. This may prohibit claimants who are not in privity with either the owner, prime contractor, subcontractor or architect. A material supplier in contract with a subcontractor may file a lien. However, a material supplier to a second tier subcontractor might have difficulty. The statutes do not clearly define this situation.

If you are required to be licensed by the Arizona Registrar of Contractors you must hold a valid license to have lien rights. An owner may not have to pay if the contractor does not hold a valid license. The Arizona courts are very strict with the licensing laws.

RESIDENTIAL OWNER OCCUPIED LIMITATION

No lien is allowed against the residence of an "owner-occupant", unless the lien claimant has a **written** contract with the owner-occupant. The effect of the statute cannot be waived by contract. The owner must hold title to the property prior to the commencement of construction, and must reside or intend to reside in the dwelling following completion of construction.

PRIORITY OF SEPARATE BUILDINGS

If a multi-building project is for residential occupancy, each building is a separate project and will have a separate completion date. This is without regard to whether the buildings are constructed pursuant to a separate contract or a single contract.

PRELIMINARY 20- DAY NOTICE

The preliminary 20- day notice is a prerequisite to filing a mechanic's lien. This notice is governed by state statute and must contain five categories of information:

A general description of the labor, materials, fixtures or supplies furnished or to be furnished, and price estimate.

The name and address of the person furnishing such labor, materials, equipment or supplies.

The name of the person who contracted for the purchase of such labor, materials, equipment or supplies.

A legal description, subdivision plat, street address or location of the job site sufficient for identification.

The preliminary 20 day notice must contain the following statement in bold print:

"In accordance with Arizona Revised Statutes 33-993.01, this is not a lien, this is not a reflection on the integrity of any contractor or sub contractor.

Notice to Property Owner

If bills are not paid in full for the labor , professional services, materials, machinery, fixtures or tools 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 against this consequence by either:

- 1. Requiring your contractor to furnish a conditional waiver and release pursuant to Arizona Revised Statutes 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 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 statement should also be contained in bold print:

Within ten days of the receipt of this preliminary twenty-day 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 § 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 § 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 against the bond as a result or not timely receiving the bond information.

Dated: _____

(Company name)

By: _____

WHO MUST BE SERVED?

A preliminary 20-day notice must be served upon the owner or reputed owner, original contractor, construction lender and the person with who the claimant has contracted to provide the labor, equipment, materials and supplies.

WHEN A PRELIMINARY 20-DAY NOTICE MUST BE SERVED:

A preliminary 20-day notice should be served within twenty days after having first provided the labor, materials,

equipment and supplies for which a lien may ultimately be sought. In the event a notice is not served within twenty days after having first provided the above, it may be later served. However, late service is only effective to protect lien rights for the value of the labor, materials, equipment and supplies provided within twenty days before the service of the preliminary 20- day notice and thereafter.

HOW TO SERVE THE NOTICE:

The service must be by first class, registered or certified mail, postage prepaid, or personal. Personal service may be hard to prove in court and is not widely used. Most lien services use first class mail-certificate of mailing. Service is complete once deposited in the mail.

EXCEEDING YOUR ESTIMATE:

When serving a preliminary 20-day notice, an estimate of the total price of the labor, materials, equipment and supplies need to be provided. If the actual value exceeds the estimated amount by more than 20%, another notice must be served to ensure the full value of the mechanic's lien.

LIEN WAIVERS

Lien claimants must avoid signing the wrong lien waiver. The following is a description of the four lien waiver forms used in Arizona:

1. Conditional Waiver and Release on Progress Payment lien waivers do not take effect until the claimant has actually received the stated payment. The form indicates that the waiver is not valid until the claimant is paid by the bank on which the check has been drawn.
2. Unconditional Waiver and Release on Progress Payment lien waivers are effective even if the claimant did not receive the stated payment.
3. Conditional Waiver and Release on Final Payment lien waivers applies to situations where the claimant is required to sign before he receives final payment. However, this waiver does not become effective until the claimant has been paid by the bank on which the check has been drawn.
4. Unconditional Waiver and Release on Final Payment lien waivers specifically states the claimant has been paid in full, and is giving up his right to file a lien or bond claim.

Unconditional Waiver and Release on Final Payment -

CONTRACTOR BEWARE!

How often have you seen this happen? A general contractor completes construction of a project. At or prior to the closing for the permanent financing, the general contractor is required to provide a Final Affidavit and Waiver of Lien (.Lien Waiver.) to the effect that the general contractor has paid all of its subcontractors and suppliers on the project. The Lien Waiver is submitted, the loan closes, the lender advances funds, the title insurer issues a title insurance policy, the owner gets his home or building, the general contractor gets his money, and everyone goes home happy. However, less than 120 days later, a subcontractor or supplier files a lien against the property as a result of nonpayment by the general contractor.

IF YOU SIGN A FULL AND FINAL UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT WITHOUT ACTUALLY RECEIVING THE CHECK, YOU HAVE SIGNED OVER YOUR RIGHT TO LIEN.

WHEN LIENS MAY BE ENFORCED

A mechanic's lien may be recorded prior to project completion, provided the lien is not for professional services, which may not be recorded until after sufficient labor or materials have been provided to the project to make it apparent that improvements have begun. Most claimants record a mechanic's lien near their deadline for doing so. However, there is a risk in waiting too long and missing the deadline.

RECORDING A LIEN

A mechanic's lien must contain seven types of information and all of them must be made under oath:

1. The legal description of the lands and improvements to be charged with the lien.
2. The name of the owner or reputed owner of the property concerned and the name of the person by whom the lienor was employed or to whom he furnished materials.
4. A statement of the terms, time given and conditions of the contract, if it is oral, or a copy of the contract, if written.
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 that the labor, materials, machinery, fixtures or tools were first furnished to the jobsite.
7. A statement of the date the preliminary 20 day notice required by § 33-992.01 was served. A copy of such preliminary 20 day notice and the proof of service required by § 33-992.02 shall be attached.

DEADLINES FOR RECORDING A MECHANIC'S LIEN

Lien claimants must record mechanic's liens within 120 days after "completion" or 60 days after recordation and service of a Notice of Completion, whichever comes first.

DEFINITION OF COMPLETION

The earliest of the following:

1. 30 days after final inspection and written final acceptance by the government body which issued the building permit for the building, structure or improvement.
2. Cessation of labor for a period of 60 consecutive days.

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 acceptance, then "completion" means the last day on which any labor, materials, fixtures or tools were furnished to the property.

NOTICE OF COMPLETION

A notice of completion is a document recorded with the county recorder for the county in which the property or some part of the property is located and served upon the parties who have served preliminary 20-day notices. The notice may be recorded at any time after the project is complete. A notice of completion may be recorded by the owner, the owner's agent, the original contractor or any other interested party. The purpose of this notice is to shorten the time period in which to file a lien. The notice contains the following information about the owner:

1. The owner's name and address.
2. The nature of the owner's interest or estate.
3. A. legal description of the job site as well as its street address.
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 work began.
6. The nature of the improvements to the real property.

SERVICE OF NOTICE OF COMPLETION

Once a notice has been recorded, the person recording the notice, within 15 days of recording, shall mail by certified or registered mail to all entities that filed 20-day notices.

If the above conditions are met, claimants lien recording time is shortened to 60 days.

LIEN FORECLOSURE

An action to foreclose a mechanic's lien must commence within six months after the recordation date. Otherwise, the claimant will lose all lien rights. A judicial foreclosure is a court action that could lead to the sale of the property.

RELEASE OF LIEN

Once a mechanic's lien has been satisfied, the lien claimant must promptly release it. The lien claimant must record a lien release in the county where the lien was recorded within twenty days after the lien has been satisfied. If the

claimant does not release the lien, he may be penalized in the amount of \$1,000.00 plus any actual damages caused by the continued presence of the lien against the property.

SANCTIONS FOR WRONGFUL LIENS

The penalties for a wrongful lien are much more severe. If a claimant files a lien without any rights to do so, he may be penalized under the Arizona wrongful lien statute. The owner of the property encumbered with the wrongful lien may recover a minimum penalty of \$5,000.00 or three times its actual damages, whichever is greater, plus attorney's fees and costs, from the lien claimant.

BOND CLAIMS

On public construction projects, subcontractors and material suppliers are protected by statutory payment bonds in lieu of lien rights, since they may not lien publicly-owned property. The general contractor is compelled to post this bond at the beginning of the project for the benefit of anyone who provides labor or materials included in the work. Potential lien claimants are entitled to a copy of the payment bond from the owner of the project.

MILLER ACT

The Miller Act applies to all construction projects where the owner is the United States Government. Any claimant who has a contract with a subcontractor, but not the general contractor, should send a preliminary 20-day notice. This notice is identical to the notice used for private construction projects, except that it is only sent to the general contractor.

LITTLE MILLER ACT

This act applies to state public works projects. The Little Miller Act [A.R.S. § 34-222](#) is modeled after the Miller Act, and protects the same groups of claimants.

NINETY DAY NOTICE

Claimants required to send 20-day notices must also send the general contractor a second written notice within ninety days after the last date on which **they** supplied labor or materials to the project, or lose their bond claim rights. The notice must make payment demand on the general contractor. This notice must contain the amount owed by the subcontractor, who purchased their labor or materials, a description of the work performed or materials supplied, and the date the claimant last provided labor and materials to the project.

PRIVATE BONDS

On non-government projects, an owner can protect his property from liens by requiring the general contractor to provide a bond in lieu of lien rights as provided by statute. The payment bond must be furnished prior to or at the time of the prime contract execution date (pre-1998 amendment). *The 1998 amendment change allows the bond to be issued at any time, and will avoid liens filed after recordation of the bond.* The bond and a copy of the contract must be recorded with the county recorder's office in the county where the land is located.

FILING THE LAWSUIT

Suit on a Miller Act payment bond within one year after the claimant last supplied labor and materials to the project. A claimant who has contracted with the general contractor must wait until ninety days after he last supplied materials

or performed labor have passed before he can bring suit.

CONTRACTOR'S LICENSE BOND

A claimant who has supplied labor, materials, or rental equipment used directly in the construction of a residence may claim against the contractor's license bond. The law requires that a preliminary 20-day notice must first be served. A claimant should act fast since the surety's liability on the license bond is limited to its penal sum which is exhausted in order of the judgments rendered against the surety.

STOP NOTICES

Few contractors in Arizona have even heard of a Stop Notice. California has been using Stop Notices for years, as an effective tool to get paid. This new weapon will probably have more impact than the Mechanic's Lien in collecting debt. The following is a summary only of Arizona Stop Notice provisions:

1. Stop Notices are for private projects only.
2. There are two types of Stop Notices.
 - A. Unbonded
 - B. Bonded, for 125% of the claim.
3. Any potential lien claimant, who served the 20-day notice, other than the original contractor, may serve the stop notice upon the owner. Any claimant, including the original contractor may serve a Stop Notice or Bonded Stop Notice upon the construction lender.



ARIZONA BOND/LIEN TIME FLOW CHART

PROCEDURE	PROJECT	TIMETABLE FOR EACH PROJECT
Preliminary Notice	Private or Public	Notice must be filed within: 20 days for the GC, Subcontractor or Supplier
Stop Notice	Private	In order to serve a stop notice, a claimant must give a preliminary notice in accordance with Arizona lien statutes. A Stop Notice may be served any time before the expiration of the time in which to record a lien.

Lien Claim	Private	<p>30 days after final inspection certificate or cessation of labor for 60 consecutive days a lien must be filed within: 120 days for GC, Subcontractor or Supplier.</p> <p>*If notice of completion is recorded and mailed certified or registered to possible lien claimants within 15 days of recordation your time frame is reduced to 60 days.</p>
Lien Foreclosure	Private	<p>Must file suite to foreclose on your lien with 6 months of lien recordation, or the lien will expire. This time table includes all parties, whether GC, Subcontractor or Supplier.</p>
Bond Claim	Public	<p>Claim against GC's bond must be filed from date of last labor/materials, within: 1 year for a Subcontractor or Supplier and 90 days for a Sub/Supplier to Subcontractor.</p>
Complaint on Bond	Public	<p>Must file suit on GC's bond with 1 year from date you last performed labor or materials (there are exceptions).</p>