

Payment Bonds

1. Federal Miller Act and State Little Miller Acts - Purpose and Applicability

- “You cannot sue the king.” By law, mechanics’ liens cannot attach to federal property or projects (nor to most state owned property or projects), so those who supply labor or materials on such public projects require an alternative remedy
- Our federal government enacted the “Miller Act” to serve as the alternative remedy, and all states have enacted various versions of a payment bond remedy
- Payment bonds protect those in direct contract with GC, and those in contract with first-tier subs (also protects second-tier subs and suppliers to first-tier contractors)
 - **Third-tier subs and second-tier suppliers are not protected (probably same for Arizona Little Miller Act)**

2. Bond Claim Letters For Public Projects

- If not in direct contract with GC, a bond claim letter must be sent to and actually received by prime within ninety days (“90-day” letter) of last date labor/materials are furnished (not date of invoice, finance charge, punch list or warranty work).
 - For Arizona Little Miller, 20-day prelim must be served and 90-day letter sent and actually received by prime. (ARS 34-223)
- Letter must state “with substantial accuracy” (1) the amount claimed, (2) to whom labor/materials were furnished, and (3) a demand to GC for payment.
 - Should also identify nature and value of labor/materials furnished and bond number if known
- Service typically required by certified mail to GC only. Advisable to copy surety, owner, lender, sub and other potentially interested parties. Some states mandate mailing to additional parties, but not Arizona.
- If in direct contract with prime, no 90-day letter required
 - For Arizona Little Miller, neither 90-day letter nor 20-day notice is required - But always give 90-day letter and 20-day notice anyway!!

3. Payment Bond Claim Foreclosure Lawsuit For Public Projects

- The Miller Act and Arizona Little Miller Act require suit to be filed on the payment bond after the ninetieth day – but not later than one year – from last date labor/materials are furnished. (U.S.C.A. 40 § 3133) (A.R.S. § 34-223)

4. Private Project Payment Bond Claims

- Obtain copy of bond and follow the notice and claim requirements specified in the bond. Arizona arguably does not permit private project payment bonds to be more restrictive than those for public projects (*i.e.*, private bond likely cannot set a six month deadline to sue when public bond permits one year) (A.R.S. § 33-1003(B))