

# ARIZONA LIEN, PAYMENT BOND, AND STOP NOTICE SUMMARY GUIDELINES\*

## PRELIMINARY LIEN NOTICES

**"Prelims" should always be given (usually necessary for perfecting lien, bond and stop notice claims)**

Send within twenty (20) days of first day materials/labor furnished ("20-day notices/prelims"). (A.R.S. § 33-992.01(C))

Must send to Owner [regardless of direct contract], construction lender, and "person with whom contracted" (A.R.S. § 33-992.01(B))

Can send later than 20 days after first day of furnishing materials/labor, but prelim will only reach back and capture materials/labor furnished within 20 days prior to prelim. (A.R.S. § 33-992.01(E))

## MECHANICS'/MATERIALMEN'S LIEN CLAIMS

Must be recorded in the Recorder's Office of the county where the job is located within a statutory period of time after "completion" or recording of a "notice of completion." (A.R.S. § 33-993) "Completion" is defined as thirty (30) days after final inspection and written final acceptance by governmental body that issued permit, or cessation of labor for 60 consecutive days. (A.R.S. § 33-993(C))

- If no notice of completion is recorded and served, a lien claimant has one hundred-twenty (120) days from the date of "completion" of the project (not necessarily completion of claimant's contract) to record its lien claim. Rule of thumb: A lien claimant has 150 days from the date the certificate of occupancy issues to record a lien (30 days for "completion" plus 120 days). (A.R.S. § 33-993(A))

- If a notice of completion is recorded and served, a lien claimant has sixty (60) days thereafter to record its lien claim in the county where the property is located. (A.R.S. § 33-993(A))

## LIEN CLAIM FORECLOSURE LAWSUIT

Suit must be filed within six months from date lien claim recorded. (A.R.S. § 33-998) A notice of pendency of action (also called a "lis pendens") must be recorded within five days of filing the lien foreclosure lawsuit. (A.R.S. §§ 33-998, 12-1191)

Failure to timely file the lawsuit or timely record the lis pendens is typically fatal to a lien claim foreclosure lawsuit.

## STOP NOTICES - (Not applicable to public projects or owner-occupied dwellings)

Suppliers and subcontractors entitled to record a lien may serve a stop notice on owner or construction lender, personally or by certified mail. General contractor entitled to record a lien cannot serve owner, but can serve lender. (A.R.S. §§ 33-1054, 1055(A), 1056(A))

Must be served "before the expiration of time allowed to record [mechanic's lien]." (A.R.S. § 33-1056(B)(2))

Rule of thumb: If you are able to record a lien, you are able to serve a stop notice.

## STOP NOTICE LAWSUIT

Suit can be filed any time after ten days from the date stop notice served – even before completion of project – but cannot be filed later than three months after the expiration of time to record lien. (A.R.S. § 33-1063(A)) "Notice of commencement" of an action to enforce a stop notice claim must be given within five days after commencement to the recipients of the stop notice. (A.R.S. § 33-1063(B))

## ARIZONA PUBLIC PROJECT PAYMENT BONDS (Federal Miller Act very similar, but does not require prelim)

If not in direct contract with prime, 20-day prelim must be served (major distinction from Miller Act). (ARS 34-223(A))

If not in direct contract with prime, bond claim notice letter must be received by general contractor within ninety (90) days of last date materials/labor furnished. Rule of thumb: The 90 days runs from last date of furnishing labor/materials per contract and not necessarily the date of invoice, and warranty/punch-list work and interest/finance charges typically do not extend time. (ARS 34-223(A))

Bond claim notice letter must provide "with substantial accuracy" the amount claimed and the name of the party to whom the material/labor was furnished, and should state claimant is looking to bond principal for payment. Reference bond number if known.

If in direct contract w/ prime, neither 20-day prelim nor "90-day letter" is required, but both are recommended. (ARS 34-223(A))

Practice tip: Only the prime contractor must receive the 90-day letter, but copying the surety, owner, lender, subcontractor, and other interested parties may cause payment to be made sooner.

## PUBLIC PROJECT PAYMENT BOND LAWSUIT

For Arizona and Federal public projects, suit can be filed after the 90th day – but not later than one year – from the last date materials/labor are furnished to project in furtherance of contract. (ARS 34-223(B)) Purely remedial work may not extend this deadline.

## PRIVATE PROJECT PAYMENT BOND CLAIMS

Obtain copy of bond, follow the notice and claim requirements specified in the bond, and sue within the time specified in bond. Arizona law arguably requires private payment bonds to be no more restrictive than payment bonds for public projects. (ARS 33-1003(B))

However, err on the side of caution and comply with the notice, claim, and suit requirements set forth in the bond.

**\*Disclaimer:** This is a general guideline, not legal advice. Governing laws and judicial interpretations are subject to change, and information provided herein is not guaranteed or warranted to be accurate. For these reasons, and because factual circumstances may vary application of controlling law, knowledgeable legal counsel should be consulted when determining applicable legal requirements and deadlines.