START\_STATUTE33-992.01.  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 construction, 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, that 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.   If 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 before the recording of a mechanic's lien and that 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 not 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‑faced 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 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 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 This preliminary lien notice has

the owner or reputed been completed by (name and

owner are: address of claimant):

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

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

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

The name and address You are hereby notified that the

of the original claimant has furnished or will

contractor are: 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 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 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 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 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 against the bond as a result of not timely receiving the bond information.

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

(Company name)

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

  (Signature)

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

     (Title)

(Acknowledgement 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 before 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 complete 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 thirty percent 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 thirty percent 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 after 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 of 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 is considered as having been given at the same time as the original preliminary twenty day notice, except that the amended preliminary twenty day notice is effective only as to work performed, materials supplied or professional services rendered twenty days before 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. END\_STATUTE