

Senate Engrossed House Bill

mechanics' liens; notice

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2110

AN ACT

AMENDING SECTION 33-992.01, ARIZONA REVISED STATUTES; RELATING TO
MECHANICS' AND MATERIALMEN'S LIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-992.01, Arizona Revised Statutes, is amended
3 to read:

4 33-992.01. Preliminary twenty day notice; definitions;
5 content; election; waiver; service; single
6 service; contract

7 A. For the purposes of this section:

8 1. "Construction lender" means any mortgagee or beneficiary under a
9 deed of trust lending funds all or a portion of which are used to defray
10 the cost of the construction, alteration, repair or improvement, or any
11 assignee or successor in interest of either.

12 2. "Original contractor" means any contractor who has a direct
13 contractual relationship with the owner.

14 3. "Owner" means the person, or the person's successor in interest,
15 that causes a building, structure or improvement to be constructed,
16 altered or repaired, whether the interest or estate of the person is in
17 fee, as vendee under a contract to purchase, as lessee, or other interest
18 or estate less than fee. If an interest or estate is held by two or more
19 persons as community property, joint tenants or tenants in common, any one
20 or more of the persons may be deemed the owner.

21 4. "Preliminary twenty day notice" means one or more written
22 notices from a claimant that are given before the recording of a
23 mechanic's lien and that are required to be given pursuant to this
24 section.

25 B. Except for a person performing actual labor for wages, every
26 person who furnishes labor, professional services, materials, machinery,
27 fixtures or tools for which a lien otherwise may be claimed under this
28 article shall, as a necessary prerequisite to the validity of any claim of
29 lien, serve the owner or reputed owner, the original contractor or reputed
30 contractor, the construction lender, if any, or reputed construction
31 lender, if any, and the person with whom the claimant has contracted for
32 the purchase of those items with a written preliminary twenty day notice
33 as prescribed by this section.

34 C. The preliminary twenty day notice referred to in subsection B of
35 this section shall be given not later than twenty days after the claimant
36 has first furnished labor, professional services, materials, machinery,
37 fixtures or tools to the jobsite and shall contain the following
38 information:

39 1. A general description of the labor, professional services,
40 materials, machinery, fixtures or tools furnished or to be furnished and
41 an estimate of the total price thereof.

42 2. The name and address of the person furnishing labor,
43 professional services, materials, machinery, fixtures or tools.

44 3. The name of the person who contracted for the purchase of labor,
45 professional services, materials, machinery, fixtures or tools.

1 4. A legal description, subdivision plat, street address, location
2 with respect to commonly known roads or other landmarks in the area or any
3 other description of the jobsite sufficient for identification.

4 5. The following statement in bold-faced type:

5 In accordance with Arizona Revised Statutes section
6 33-992.01, this is not a lien and this is not a reflection on
7 the integrity of any contractor or subcontractor.

8 Notice to Property Owner

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

16 1. Requiring your contractor to furnish a conditional
17 waiver and release pursuant to Arizona Revised Statutes
18 section 33-1008, subsection D, paragraphs 1 and 3 signed by
19 the person or firm giving you this notice before you make
20 payment to your contractor.

21 2. Requiring your contractor to furnish an
22 unconditional waiver and release pursuant to Arizona Revised
23 Statutes section 33-1008, subsection D, paragraphs 2 and 4
24 signed by the person or firm giving you this notice after you
25 make payment to your contractor.

26 3. Using any other method or device ~~which~~ THAT is
27 appropriate under the circumstances.

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

30 Arizona Preliminary Twenty Day Lien Notice

31 In accordance with Arizona Revised Statutes section
32 33-992.01, this is not a lien. This is not a reflection on
33 the integrity of any contractor or subcontractor.

34 The name and address of This preliminary lien notice has
35 the owner or reputed been completed by (name and
36 owner are: address of claimant):

37 Date: _____

38 By: _____

39 Address: _____

40 The name and address You are hereby notified that the
41 of the original claimant has furnished or will
42 contractor are: furnish labor, professional
43 services, materials, machinery,
44 fixtures or tools of the
45 following general description:

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

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

6
7 The name and address
8 of the person with
9 whom the claimant
10 has contracted are:

And situated ~~upon~~ ON that certain
11 lot(s) or parcel(s) of land in
12 _____ County, Arizona,
13 described as follows:

14 An estimate of the total price of
15 the labor, professional services,
16 materials, machinery, fixtures
17 or tools furnished or to be
18 furnished is: \$ _____

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

20 Notice to Property Owner

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

28 1. Requiring your contractor to furnish a conditional
29 waiver and release pursuant to Arizona Revised Statutes
30 section 33-1008, subsection D, paragraphs 1 and 3 signed by
31 the person or firm giving you this notice before you make
32 payment to your contractor.

33 2. Requiring your contractor to furnish an
34 unconditional waiver and release pursuant to Arizona Revised
35 Statutes section 33-1008, subsection D, paragraphs 2 and 4
36 signed by the person or firm giving you this notice after you
37 make payment to your contractor.

38 3. Using any other method or device that is appropriate
39 under the circumstances.

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

42 Within ten days ~~of~~ AFTER the receipt of this preliminary
43 twenty day notice the owner or other interested party is
44 required to furnish all information necessary to correct any
45 inaccuracies in the notice pursuant to Arizona Revised

1 Statutes section 33-992.01, subsection ~~f~~ j or lose as a
2 defense any inaccuracy of that information.

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

15 Dated: _____
16
17 _____
18 (Company name)
19 By: _____
20 (Signature)
21 _____
22 (Title)

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

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

35 F. The notice or notices required by this section may be given by
36 mailing the notice by first class mail sent with a certificate of mailing,
37 registered or certified mail, postage prepaid in all cases, addressed to
38 the person to whom notice is to be given at the person's residence or
39 business address. Service is complete at the time of the deposit of
40 notice in the mail.

41 G. A person required by this section to give notice to the owner,
42 to an original contractor, to the construction lender, if any, and to the
43 person with whom the claimant has contracted need give only one notice to
44 the owner, to the original contractor, to the construction lender, if any,
45 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

1 estimated total price for the labor, professional services, materials,
2 machinery, fixtures or tools furnished or to be furnished exceeds by
3 thirty percent or more the total price in any prior original or subsequent
4 preliminary notice or unless the labor, professional services, materials,
5 machinery, fixtures or tools are furnished under contracts with more than
6 one subcontractor, in which case notice requirements shall be met for all
7 additional labor, professional services, materials, machinery, fixtures or
8 tools.

9 H. If a notice contains a general description required by
10 subsection C of this section of the labor, professional services,
11 materials, machinery, fixtures or tools furnished up to the date of
12 notice, it is not defective because after the date the person giving
13 notice furnishes labor, professional services, materials, machinery,
14 fixtures or tools that are not within the scope of the general
15 description, or exceed by less than thirty percent the estimated total
16 price thereof.

17 I. A NOTICE THAT IS OTHERWISE COMPLIANT WITH THIS SECTION IS NOT
18 DEFECTIVE BASED ON THE FAILURE TO USE BOLD-FACED TYPE AS PRESCRIBED BY
19 THIS SECTION OR THE FAILURE TO USE TYPE AT LEAST AS LARGE AS THE LARGEST
20 TYPE OTHERWISE ON THE DOCUMENT AS PRESCRIBED BY THIS SECTION, OR BOTH.

21 ~~J.~~ J. Within ten days after receipt of a written request from any
22 person or the person's agent intending to file a preliminary twenty day
23 notice, which request shall identify the person, the person's address, the
24 jobsite and the general nature of the person's labor, professional
25 services, materials, machinery or tools to which the preliminary twenty
26 day notice shall apply, or within ten days after the receipt of a
27 preliminary twenty day notice, the owner or other interested party shall
28 furnish the person a written statement containing the following
29 information:

30 1. The legal description, subdivision plat, street address or
31 location with respect to commonly known roads or other landmarks in the
32 area, or any other description of the jobsite sufficient for
33 identification.

34 2. The name and address of the owner or reputed owner.

35 3. The name and address of the original contractor or reputed
36 contractor.

37 4. The name and address of the construction lender, if any, or
38 reputed construction lender.

39 5. If any payment bond has been recorded pursuant to section
40 33-1003, a copy of the bond and the name and address of the surety company
41 and bonding agent, if any, providing the payment bond.

42 ~~K.~~ K. Failure of the owner or other interested party to furnish
43 the information required by this section does not excuse any claimant from
44 timely giving a preliminary twenty day notice, but it does stop the owner
45 from raising as a defense any inaccuracy of the information in a

1 preliminary twenty day notice, provided the claimant's preliminary twenty
2 day notice of lien otherwise complies with ~~the provisions of~~ this chapter.
3 If the information is received by the claimant after the claimant has
4 given a preliminary twenty day notice and the information contained in the
5 preliminary twenty day notice is inaccurate, the claimant shall, within
6 thirty days ~~of~~ AFTER the receipt of this information, give an amended
7 preliminary twenty day notice in the manner provided in this section. An
8 amended preliminary twenty day notice is considered as having been given
9 at the same time as the original preliminary twenty day notice, except
10 that the amended preliminary twenty day notice is effective only as to
11 work performed, materials supplied or professional services rendered
12 twenty days before the date of the amended preliminary twenty day notice
13 or the date the original preliminary twenty day notice was given to the
14 owner, whichever occurs first. If a payment bond has been recorded in
15 compliance with section 33-1003 and the owner or other interested party
16 fails to furnish a copy of the bond and the other information as required
17 by this section, the claimant shall retain lien rights to the extent
18 precluded or prejudiced from asserting a claim against the bond as a
19 direct result of not timely receiving a copy of the bond and the other
20 information from the owner or other interested party.