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Mechanics' Lien Checklist

- Are mechanic's liens allowed for your project?
 - Mechanic's liens are not permitted on public works projects because under Arizona law, you can't lien public property. Instead, the contractor will be required to execute a payment bond. See payment bond checklist below.
 - On owner-occupied dwellings, i.e., most single family residential projects, no liens are allowed except by contractors who have a written contract directly with the owner-occupant. A.R.S. § 32-1002. Therefore, subcontractors on single family residential projects who contract with the general contractor but have no written contract directly with the owner have **no** lien rights.
 - On private projects where a payment bond has been executed and recorded pursuant to A.R.S. § 33-1003, mechanic's liens are not permitted. Recovery can be made against the bond.
 - On other private projects, mechanic's liens are permitted.
- Are you properly licensed?
 - If not properly licensed, cannot recover. A.R.S. § 32-1153, § 33-981.
- Have you satisfied your obligations of performance on the project or are otherwise excused from doing so?
 - For example, pursuant to Prompt Pay Act, A.R.S. § 32-1129.04, you may suspend or terminate performance under certain circumstances if you have not been paid. If so, you may still be entitled to record a mechanic's lien.
- Did you provide a preliminary 20-day notice?
 - The notice **must** be in the form set forth in the statute, A.R.S. § 32-992.01. If it is not, your lien will be invalid.

- You must provide proof of service. Recipients rarely return the acknowledgement of service on the notice, so you must prove service by (1) obtaining a certificate of mailing showing when the notice was mailed, **and** (2) providing an affidavit that service was made as indicated on the certificate of mailing.
- If the value of the labor and materials you intend to furnish to the project exceeds 20% of the amount stated on your notice, you must provide an amended notice for the new total amount, not the amount of the increase. Otherwise, your recovery will be limited to 120% of the amount stated in your notice.
- You must timely record your lien.
 - You must record your lien within 120 days of completion, unless a notice of completion has been recorded and served on you, in which case you have only 60 days to record your lien.
 - Completion is the earlier of: (1) 30 days after final inspection and final written acceptance by the government body that issued the building permit, or (2) cessation of labor for a period of 60 consecutive days. If a building permit is not issued or if the governmental body that issued the building permit does not issue final inspections and written final acceptances, then completion is the last day on which any labor, materials, fixtures, or tools were furnished.
 - If a project for residential occupancy consists of more than one separate building, regardless of whether the buildings are constructed pursuant to separate contracts or one contract, the time within which to record a lien, commences to run on the completion of each separate building, and a separate lien needs to be filed within the appropriate time frame after completion of each separate building.
- Your lien must provide all the information required by the statute. A.R.S. § 33-993.
 - You must provide the exact legal description of the property. The street address or the name of the project is not sufficient.
 - You must identify the name of the owner or the reputed owner, and the name of the contractor to whom you furnished labor or materials.
 - You must state the terms of the contract if oral, or provide a copy of the contract if written.

- You must state your demand, after deducting all just credits and offsets.
- You must state the date of completion.
- You must state the date you served your preliminary 20-day notice, **and** provide a copy of the notice, **and** provide proof of service.
- Don't record a lien which you know is invalid.
 - You could be held liable for at least \$5,000 in damages or treble the actual damages caused by the wrongful recording of the lien, whichever is greater, plus the other side's costs and attorneys' fees. A.R.S. § 33-420.
- If you have not been paid on your claim, you must file suit before the expiration of the statute of limitations.
 - You must file suit within six months from the date you recorded your lien. A.R.S. § 33-998.
 - You must record a lis pendens within five calendar days after you file your lawsuit. A.R.S. § 12-1191. In addition, A.R.S. § 33-998 requires that the lis pendens be recorded within 6 months after the date you recorded your lien. You must satisfy **both** of these requirements. If you file your lawsuit within six months but do not record your lis pendens within five days, your claim is extinguished. If you file your lawsuit within six months and your lis pendens five days thereafter but more than six months after you recorded your lien, your claim is extinguished. Practice tips: (1) don't wait for the last day to file your lawsuit; (2) always record your lis pendens the same day you file your lawsuit.
- You are entitled to recover your costs and reasonable attorneys' fees as part of your lawsuit. A.R.S. § 12-341; § 33-998.
- A lien discharge bond may be executed and recorded to discharge your lien. A.R.S. § 33-1004. If you receive notice that this has occurred, provide notice to the bond surety pursuant to the terms of the bond. You must sue or join in your existing lawsuit the bond principal and surety within the limitations period for filing a lawsuit to foreclose the lien or, if the bond is provided to you within 90 days of your deadline to file suit, you have 90 days from receipt of the bond to file suit. If the bond was not provided to you but you discover it within two years from the date it was recorded, you have six months from discovery to file suit. A.R.S. § 33-1004.
- Once you have been paid, execute the appropriate waivers and/or releases.

- There are four lien waiver forms: conditional progress, unconditional progress, conditional final, unconditional final. The forms are set forth in the statute, A.R.S. § 33-1008. As requested by the general contractor, provide conditional waivers with your applications for payment. Do not provide unconditional waivers until the check clears. If you sign an unconditional waiver to pick up payment and the check bounces, you have still given up your rights to payment.
- If you have recorded a lien and/or a lis pendens, you must record the appropriate release of lien and/or release of lis pendens. A.R.S. § 33-1006.
- If you have any questions concerning the procedure, deadlines, documentation, or other issues, consult your attorney.

Stop Notice Checklist

- Are stop notices allowed for your project?
 - Stop notices are applicable to the same projects as mechanic's liens. Stop notices may not be served on public projects or on owner-occupied projects by contractors without direct written contracts with the owner.
- Are you properly licensed?
 - If not properly licensed, cannot recover. A.R.S. § 32-1153; § 33-1055.
- Have you satisfied your obligations of performance on the project or are otherwise excused from doing so?
 - For example, pursuant to Prompt Pay Act, A.R.S. § 32-1129.04, you may suspend or terminate performance under certain circumstances if you have not been paid. If so, you may still be entitled to serve a stop notice.
- You must provide a preliminary 20-day notice.
 - The same notice that must be provided to protect your lien rights also serves to protect your stop notice rights. A.R.S. § 33-1056.
- Your stop notice must contain the information required by the statute. A.R.S. § 33-1051.
 - A stop notice is a written notice that is signed and verified by the claimant and provides the following required information: (1) description of the labor; professional services, materials, machinery, fixtures, or tools furnished or

agreed to be furnished by the claimant; (2) the name of the person to or for whom the labor, professional services, materials, machinery, fixtures, or tools were furnished or agreed to be furnished; (3) the amount in value of the labor, professional services, materials, machinery, fixtures, or tools already furnished, and the total amount agreed to be furnished; (4) the amount, if any, of payment received by the claimant for the labor, professional services, materials, machinery, fixtures, or tools furnished or agreed to be furnished; and (5) the name and address of the claimant.

- You should timely serve your stop notice on the owner and, if applicable, the construction lender.
 - You can serve a stop notice at any time you are owed money, even prior to the completion of the project.
 - Any contractor who fails to serve a stop notice within 30 days of a written demand from the owner forfeits his right to serve further stop notices on the project. A.R.S. § 33-1055.
- You may or may not bond your stop notice.
 - If you provide a bond for 125% of the amount of the claim, the construction lender must withhold sufficient funds to satisfy the claim, unless a payment bond pursuant to A.R.S. § 33-1003 was recorded, in which case the lender's withholding of funds is at its discretion.
 - If you do not bond your stop notice, the lender may withhold funds to satisfy the claim, but is not required to do so. The owner must withhold sufficient funds from the general contractor to satisfy the claim, unless a payment bond pursuant to A.R.S. § 33-1003 was recorded, in which case the owner's withholding of funds is at its discretion.
- Don't serve a stop notice which you know is invalid.
 - You could be held liable for at least \$5,000 in damages or treble the actual damages caused by the wrongful service of the stop notice, whichever is greater, plus the other side's costs and attorneys' fees. A.R.S. § 33-420. In addition, you forfeit your lien rights. A.R.S. § 33-1061.
- If you have not been paid on your claim, you must file suit before the expiration of the statute of limitations.

- You may file your lawsuit after ten days from the date of service of the stop notice but not later than three months after the expiration of the period within which lien must be recorded, unless all parties required to be parties in the claim stipulate to an extension of time to bring the action for not more than three additional months. A.R.S. § 33-1063.
- You are entitled to recover your costs and reasonable attorneys' fees as part of your lawsuit. A.R.S. § 12-341; § 33-1066.
- Once you have been paid, execute the appropriate waivers and/or releases.
- If you have any questions concerning the procedure, deadlines, documentation, or other issues, consult your attorney.

Payment Bond Checklist

- Is there a payment bond for your project?
 - If a public works project, there will be a payment bond. Request a copy from your general contractor. Write into your subcontract that the contractor must provide you with a copy of the bond.
 - If a private project, there may or may not be a payment bond. Request a copy from your general contractor. Write into your subcontract that the contractor must provide you with a copy of the bond, if any, whether the bond is executed prior to or during the project.
- Are you properly licensed?
 - If not properly licensed, cannot recover. A.R.S. § 32-1153.
- Have you satisfied your obligations of performance on the project or are otherwise excused from doing so?
 - For example, pursuant to Prompt Pay Act, A.R.S. § 32-1129.04, you may suspend or terminate performance under certain circumstances if you have not been paid. If so, you may still be entitled to recover against the payment bond.
- Did you provide a preliminary 20-day notice if required?
 - For example, under the Little Miller Act, A.R.S. § 34-223, subcontractors without privity with the general contractor furnishing the payment bond

must provide a 20-day notice. Subcontractors with privity do not (but should anyway).

- On private projects, the requirements of the bond controls.
- Did you provide a 90-day notice if required?
 - For example, under the Little Miller Act, A.R.S. § 34-223, subcontractors without privity with the general contractor furnishing the payment bond must provide a 20-day notice. Subcontractors with privity do not (but should anyway).
 - On private projects, the requirements of the bond controls.
- Have you submitted documentation of your claim as requested by the surety?
 - Respond promptly to all requests for documentation. Keep a copy of your submittal to the surety.
- If you have not been paid on your claim, you must file suit before the expiration of the statute of limitations.
 - For example, under the Little Miller Act, you must file your lawsuit within one year of the date on which you last furnished labor or materials.
 - On private projects, the requirements of the bond controls, but under Arizona law, A.R.S. § 20-1115, the limitations period must be at least two years.
- You are entitled to recover your costs and reasonable attorneys' fees as part of your lawsuit. A.R.S. § 12-341; § 34-223 (Little Miller Act bonds); A.R.S. § 12-341.01 and/or the language of the bond.
- Once you have been paid, execute the appropriate waivers and/or releases.
- If you have any questions concerning the procedure, deadlines, documentation, or other issues, consult your attorney.