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# **Lien, Prompt Pay and Stop Notice Handbook**

**Guidelines for Securing Payment**

May 2009 Edition

Lang & Baker, PLC

*Construction Litigation • Commercial Litigation  
Creditors' Rights • Real Estate Law • Corporate Law*

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*The information provided in this handbook is intended to be general in nature and should not be construed as specific legal advice. Reliance on this information by any party does not establish a client relationship with Lang & Baker, PLC. Further, the statutes referenced in this handbook are full of detailed requirements and exceptions. Therefore, this handbook does not contain an exhaustive discussion and is not intended to substitute for specific legal advice in the event you must deal with payment problems.*

## Arizona's "prompt payment" statutes

A.R.S. § 32-1129.02 provides that a licensed contractor, licensed subcontractor, or material supplier who has performed according to its contract is entitled to prompt payment from the party with which it contracted.

**Contractor's prompt payment obligation.** Every contractor or subcontractor must pay its licensed subs and suppliers for their labor or materials within seven days of its own receipt of payment from the owner. Unlicensed contractors and subcontractors cannot enforce the prompt payment law.

A general contractor is not required to submit a subcontractor's invoice to the owner for payment if he disputes the sufficiency of the work performed or the materials supplied. A general contractor can withhold certification of the subcontractor's work for unsatisfactory job progress; defective construction work or material; disputed work; failure to comply with material provisions of the construction contract; failure of the subcontractor to make timely payments for labor, equipment and materials; damage to another tradesman; or reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract price.

However, a general contractor is not entitled to apply for and receive payment for a subcontractor's work and then withhold payment from the subcontractor or supplier. A subcontractor or supplier who is not paid within the seven-day period is entitled to interest on the unpaid amount at 18% per annum. Non-payment is also grounds for disciplinary action by the Registrar of Contractors against the non-paying contractor or subcontractor.

**Owner's prompt payment obligation.** Similarly, A.R.S. § 32-1129.01 requires a project owner to promptly pay the general contractor. In most cases, the project owner is required to make monthly progress payments to the general contractor based upon the general contractor's billing or estimate of work performed during the preceding 30-day billing cycle.

Each monthly billing or estimate is deemed approved 14 days after receipt by the owner, unless the owner issues a written statement detailing the items that are not approved and certified. The owner must issue the progress payment to the general contractor within seven days thereafter. Late payments bear interest at 18% per annum. The owner and general contractor can agree to modify the statutory payment terms only if notice of an alternative billing cycle appears plainly on each page of the project plans, including bid plans.

An owner can decline to approve and certify any billing or portion of a billing, and withhold a reasonable amount from the progress payment, for the following reasons:

- unsatisfactory job progress;
- defective construction work or materials not remedied;
- disputed work or materials;
- failure to comply with other material provisions of the construction contract;

- third party claims filed or reasonable evidence that a claim will be filed;
- failure of the contractor or subcontractor to make timely payments for labor, equipment and materials;
- damage to the owner;
- reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum; or
- retention.

The owner may withhold only an amount sufficient to pay the direct expenses it reasonably expects to incur to correct the items set forth in its written notice.

**Contractor's right to stop work.** A contractor may suspend performance or terminate the construction contract if the owner fails to timely pay the amount certified and approved, provided the contractor gives seven days' prior written notice to the owner (A.R.S. § 32-1129.04[A]).

**Subcontractor's right to stop work.** Similarly, a subcontractor may suspend performance or terminate a subcontract if (a) the owner fails to timely pay the amount certified and approved for the subcontractor's work, and (b) the general contractor also fails to pay for that work. Before suspending performance or terminating the subcontract for this reason, a subcontractor must give three days' prior written notice to the general contractor and the owner (A.R.S. § 32-1129.04[B]).

A subcontractor also may suspend performance or terminate a subcontract if the owner timely pays the general contractor for the subcontractor's work but the general contractor fails to pay the subcontractor. In this instance the subcontractor must give seven days' prior written notice to the general contractor and the owner (A.R.S. § 32-1129.04[C]).

A subcontractor may suspend performance or terminate a subcontract if the owner declines to certify and approve payment for the subcontractor's work, but the reason for refusal is not the fault of the subcontractor or directly related to the subcontractor's work. In this instance the subcontractor must give seven days' prior written notice to the general contractor and the owner. (A.R.S. § 32-1129.04[D]).

**Notice.** The written notice (*see sample documentation on page 20*) required by this section must be personally delivered to an individual, to a member of a limited liability company, or to an officer of a corporation, or delivered by any means that gives written, third-party verification of delivery to the business address of the recipient, e.g., by courier or Federal Express (A.R.S. § 32-1129.04[G]).

In each case, the contractor or subcontractor cannot be considered in breach of the contract because it lawfully suspends work or terminates the contract according to the statute. A contractor or subcontractor that suspends performance in compliance with the statute is not required to provide further services or materials until it receives payment of the amount certified and approved, together with the mobilization costs of shutting down and starting up the project (A.R.S. § 32-1129.04[E]).

## **Mechanics' liens and stop notices on private Arizona construction projects**

Arizona laws on mechanics' and materialmen's liens protect parties that supply labor, professional services, materials, machinery, fixtures or tools for the improvement of real property. This handbook may be useful in understanding the steps you must take to protect your payment rights.

This section is designed to be used with the PRIVATE PROJECT LIEN WORKSHEET (*left*), which you may wish to attach to each of your private construction job files. As your work progresses, track the steps completed and calendar the upcoming deadlines to preserve your lien and stop notice rights.

**Limitations on lien rights.** Mechanics' liens apply only to private construction projects, since publicly owned property cannot be liened. On "owner occupied" residential property, you usually will have lien rights only if you have contracted directly with the owner. Finally, if you are required to be licensed by the Arizona Registrar of Contractors or Board of Technical Registration, you must hold a valid license to have lien rights.

### **Instructions for using the "Private Project Lien Worksheet"**

- 1. Contract date.** The contract date is the date on which your written contract is signed. If you have no written contract, the contract date is the first date on which you supply labor or materials.
- 2. Request the information for your Preliminary Twenty-day Notice.** Immediately request the information you will need to prepare your Preliminary 20-Day Notice and information about any payment bond that may exist. A WRITTEN REQUEST FOR INFORMATION is included in this handbook (*Form A, page 16*).

In order to have lien rights for all the materials and services you provide, you must serve a Preliminary 20-Day Notice within 20 days after you first provide labor or deliver materials to the job site. A Preliminary Notice can be served later, more than 20 days after the first work or delivery, but lien rights do not begin until 20 days before the date of the Notice. For example, if you start work on April 1 and serve your preliminary notice on April 30, your lien rights will begin on April 10 (A.R.S. § 33-992.01[E]). A contractor who serves a late Preliminary Notice forfeits the right to lien for materials and services delivered more than 20 days before the Notice. A contractor who fails to serve a Preliminary 20-Day Notice altogether forfeits all lien rights, stop notice rights, and payment bond rights on state public projects.

- 3. Serve the Preliminary 20-Day Notice.** Arizona law (A.R.S. § 33-992.01[B]) requires every lien claimant, other than a laborer for wages, to serve a written Preliminary 20-Day Notice to:
  - the owner or reputed owner
  - the original contractor or reputed contractor

- the construction lender or reputed construction lender, and
- the person with whom he contracts.

Mail the notice via either first-class mail with a certificate of mailing, registered mail, or certified mail, postage prepaid, and addressed to each person at his or her business or residence. We recommend that you send a copy of the Preliminary 20-Day Notice to the payment bond surety as well.

A standard PRELIMINARY 20-DAY LIEN NOTICE is provided on page 17 (Form B). The law requires you to "substantially follow" the Preliminary 20-Day Notice form set forth in A.R.S. § 33-992.01.

- 4. Prepare an Affidavit of Service.** You must be able to prove that you served the Preliminary 20-Day Notice. The Notice form contains an "acknowledgment of receipt" that the recipient can complete and return to you within 30 days. In the event the recipient does not return the receipt, you must prepare an affidavit of service stating the time, place and manner of service. Keep it in a safe place with a copy of the Notice and the U. S. Postal Service certificate of mailing or delivery receipt, which must be attached to the affidavit (A.R.S. § 33-992.02).
- 5. Be prepared to supplement your Preliminary 20-Day Notice.** The initial Preliminary 20-Day Notice will protect your lien rights up to 120% of the amount stated in the Notice. If the value of your labor or services exceeds the amount stated by more than 20%, you must serve a Supplemental Preliminary 20-Day Notice within 20 days of providing the excess service or materials. Serve the Supplemental Notice in the same manner described in steps 3 and 4 above.
- 6. We recommend using a qualified lien service with errors and omissions insurance.** Obviously, the requirements for an effective Preliminary 20-Day Notice can be daunting. Good lien services are in the business of serving Notices that satisfy the statute and preserving the documents that must be included in a valid lien. Ask whether the service is licensed by the State Bar of Arizona as a legal document preparer. Ask whether it has adequate errors and omissions insurance in case it makes a mistake. Then include the cost of the Notice in your bid.
- 7. Record the last date when you provide labor or materials.** This date may become important in determining the deadline for recording your Notice and Claim of Lien. Make certain that you have completely performed the work required by your contract.
- 8. Not paid on time?** If you are not paid in full and on time, notify the general contractor, the party with whom you contracted, the owner of the property, the construction lender, and the payment bond surety in writing. Also, promptly consult your attorney. This brief summary is not a substitute for specific legal advice. The longer you wait to consult your attorney, the fewer options your attorney will have in trying to assist you.

**9. Deadline for recording and serving your lien.** A Notice and Claim of Lien must be recorded no later than 120 days after project completion or, if the owner records a Notice of Completion, no later than 60 days after the Notice is recorded. If the project consists of more than one building, each building requires a separate notice and claim of lien. The time for recording runs from the completion of each building.

*Date of project completion.* A.R.S. § 33-993(C) defines “completion” as the earlier of the following events:

- 30 days after final inspection and written final acceptance by the governmental body that issued the building permit (usually a Certificate of Occupancy); or
- cessation of labor for 60 consecutive days, except when cessation is due to a strike, shortage of materials or Act of God.

If no building permit is issued, or if the entity that issued the building permit does not issue a final acceptance, the completion date for lien purposes is the last date on which any labor, materials, fixtures or tools were furnished to the property. (A.R.S. § 33-993[D])

*Notice of Completion shortens your lien time.* If the owner records a Notice of Completion, your time for recording a lien will expire 60 days after the Notice is recorded. The owner is required to give you a copy of the Notice of Completion within 15 days, provided you have properly served the Preliminary 20-Day Notice.

**10. Consider securing payment by serving a Stop Notice.** If you are not paid, you can both record a lien and serve a “stop notice.” The stop notice law gives contractors, subs and suppliers a second collection remedy: a demand that the owner or construction lender immediately withhold amounts out of the undisbursed construction funds to satisfy the claim.

*Delays avoided.* A lawsuit to enforce the stop notice may be filed as early as 10 days after the notice is served and requires no title search on the real property. You can pursue a stop notice during construction without impeding the project, and you retain your lien rights if enforcement of the stop notice does not satisfy your claim.

*Hold on funds.* A mechanic’s lien is a claim against real property; a stop notice is a claim against construction funds held by the owner or construction lender. An owner who receives a stop notice must withhold monies to satisfy the claim unless he has recorded a payment bond on the project. In contrast, a construction lender may elect not to withhold the monies unless a bond for 125% of the amount stated accompanies the stop notice.

*Stop notice eligibility.* Stop notices may be served in connection with all private construction projects except owner-occupied dwellings. In order to serve a stop

notice, you must serve a Preliminary 20-Day Lien Notice.

- Anyone who is entitled to record a lien – other than the original contractor – may serve a stop notice on the owner.
- Anyone who is entitled to record a lien – including the original contractor – may serve a stop notice on the construction lender.
- The time requirement for recording a lien also applies to serving a stop notice; both rights expire on the same day.

*Owner's demand for stop notices.* The project owner or construction lender may send out a written request for stop notices. If you are a claimant, and if you fail to respond with a stop notice within 30 days after written demand, you forfeit all stop notice rights on the project. If the total stop-notice claims exceed the remaining construction funds, the owner or lender may distribute the remaining funds on a pro rata basis.

*False notice.* Willfully serving a false stop notice carries a heavy penalty. If you willfully give a false stop notice or bonded stop notice, or if you knowingly include in a stop notice any work or materials that you didn't furnish to the project, you forfeit all stop notice rights and your right to participate in any distribution of monies. In addition, you would be subject to statutory penalties: \$5,000 or more in damages, liability for the owner's attorney fees, and criminal prosecution.

- 11. Filing a legal action to enforce the Stop Notice.** A stop notice claimant may file a lawsuit to enforce payment as early as ten days after the stop notice is served. The time for filing a legal action to enforce a stop notice expires three months after the deadline for recording liens. If no action is filed on the stop notice within that time, any monies frozen by the stop notice will be released.
- 12. Filing a lien foreclosure action.** A mechanics' lien automatically expires six months after it is recorded. Any lawsuit to foreclose the lien must be filed within that period and a *lis pendens* must be recorded within five days of filing.
- 13. Lien satisfaction and release.** Within 20 days of receiving payment in full, or within 20 days after a written request from an owner-occupant, a lien claimant must record a Satisfaction and Release of Lien. If the claimant fails to do so, the claimant can be held liable to the owner of the property for damages.
- 14. Waiver and release of lien rights.** Arizona law provides four statutory forms of conditional and unconditional waivers to be used in connection with receipt of a progress payment or final payment. Note that executing an unconditional waiver or a waiver acknowledging final payment deprives you of your right to sue for additional payment. Therefore, exercise extreme caution when executing a waiver and release. Never sign an unconditional release until you have been paid in certified funds or know that the check you received has cleared. If you are at all unsure, seek legal assistance before you sign.

### Private Project Lien Worksheet

Job \_\_\_\_\_

Contractor \_\_\_\_\_ Owner \_\_\_\_\_

Surety \_\_\_\_\_ Construction Lender \_\_\_\_\_

Deadlines *File Lien and Serve Stop Notice* \_\_\_\_\_

*Stop Notice Action* \_\_\_\_\_

*Lien Foreclosure Action* \_\_\_\_\_

**Preliminary 20-Day Notice**

**Deadline Done**

		Deadline	Done
1.	Contract date		
2.	Send written request to owner for information needed to serve Preliminary 20-Day Notice ( <i>Form A</i> )		
2a.	Date when we first furnished labor and/or materials to the project		
3.	Serve Preliminary 20-Day Notice ( <i>Form B</i> ) within 20 days of date on line 2a		
4.	Prepare Affidavit of Service ( <i>Form C</i> ) within 30 days of line 3		
5.	If labor and material we provide exceed, by 20% or more, the amount in the Preliminary 20-Day Notice, serve a supplemental notice within 20 days		
6.	Date when we last provided labor or materials to the project		
7.	If we do not receive full payment on time, notify the general contractor, owner, payment bond surety and construction lender in writing		

**Calculate the date of project completion – the earliest of the following dates:**

8.	Thirty days after a “final completion and written final acceptance by the governmental body that issued the building permit” – usually a final certificate of occupancy	
	60 <sup>th</sup> consecutive day of no work — unless due to material shortage, strike, or act of God	
	Date when Notice of Completion is recorded	

**Record the lien and/or serve the Stop Notice within the time allowed:**

9.	If Notice of Completion is recorded, within 60 days of recording date; if Notice of Completion is <i>not</i> recorded, within 120 days after completion	
	After the Notice and Claim of Lien is recorded, a copy must be served on the owner using one of the statutory methods, preferably on the lien date	

**Sue to foreclose the lien and/or enforce the stop notice**

10.	File action on Stop Notice within 3 months after deadline for recording liens	
11.	File a lien foreclosure action within 6 months of lien recording date	
12.	When full payment received, record/serve Satisfaction and Release of Lien	

This checklist is not a substitute for specific legal advice. If you have a question about a specific payment, lien, or bond claim issue, contact Kent Lang or Elaine Blunck at (480) 947-1911.

## Payment bond claims on private projects

This section of the handbook is designed to be used with the PRIVATE PAYMENT BOND WORKSHEET, which you may wish to attach to each of your private construction job files. As your work progresses, track the steps completed and calendar the upcoming deadlines to preserve your right to recover against the payment bond.

A surety bond is a specialized, three-party contract by which the surety company guarantees the owner that the contractor, who is the principal on the bond, will perform a particular contract. Surety bonds that protect the owner against the risk that the general contractor may default and fail to perform its obligations are an integral part of the construction process.

A performance bond protects the owner from financial loss in case the contractor fails to perform its construction contract. A payment bond, or labor and material bond, guarantees the owner that the contractor will pay subcontractors, suppliers, and workers. The subcontractors, suppliers and workers are beneficiaries of the payment bond.

In Arizona a private project owner can prevent lien claimants from recording liens on his property by recording the general contract and a payment bond. Once those documents are recorded, only persons who contract directly with the owner have lien rights. A.R.S. § 33-1003. Therefore it is very important to find out whether there is a payment bond in effect on your project and meet its requirements for payment.

*There are no statutes governing the terms of private payment bonds in Arizona. Private owners and general contractors are free to privately negotiate terms tailored to their particular requirements. Private bonds can contain extra "hurdles" for a claimant that cannot be anticipated without reading the bond.*

In addition, the general contractor is not required to advertise the fact that the project is bonded. Subcontractors and suppliers may not even know they have rights under a payment bond. This has been called "the most expensive question that was never asked." When payment problems arise, subcontractors and suppliers should contact the owner and make it clear that a lien will be filed unless the job is bonded and a copy of the bond is provided.

Until you ascertain whether a payment bond has been posted and obtain a copy of it for your lawyer's review, we recommend that you do the following:

- 1. Immediately upon contracting, serve a Preliminary 20-Day Notice.** Request the information necessary for the Notice, prepare it, and serve it in the same manner as described on page 7, by either first-class mail with a certificate of mailing, registered mail, or certified mail, postage prepaid, and addressed to the business or residence of the party served. Serve (a) the owner or reputed owner, (b) the original contractor or reputed contractor, (c) the construction lender or reputed construction lender, and (d) the person with whom you contracted. If you know the payment bond surety, serve the surety as well.

- 2. Prepare an Affidavit of Service.** Prepare your Affidavit of Service and keep it in a safe place with a copy of the Notice and the U. S. Postal Service certificate of mailing. If the materials and services you provide exceed the Preliminary 20-Day Notice estimate by more than 20%, serve a supplemental Preliminary 20-Day Notice.
- 3. Record the last date when you provide labor or materials to the project.** This date is critical because it determines the deadlines for serving your 90-day post-completion notice and for filing a lawsuit on the bond. Work done solely to effect repairs, make corrections, or complete a final inspection usually do not extend the deadline. Make certain that you have completely performed your contract.
- 4. Serve your post-completion notice upon completion of your work.** Serve the post-completion notice to the same people and in the same manner as provided for Preliminary 20-Day Notices (*see page 14*). A private payment bond may have a shorter claim deadline than the 90 days provided for public works, so serve this notice right away.
- 5. File an action on the payment bond within one year.** The time for filing a lawsuit on a private payment bond will be governed by the terms of the bond. Private payment bonds commonly provide that the time for filing an action expires one year after the last day on which you perform work under your contract. If you do not receive timely payment, do not delay in seeking advice of legal counsel.

### Private Project Bond Worksheet

**Job** \_\_\_\_\_

**Contractor** \_\_\_\_\_

**Owner** \_\_\_\_\_

**Surety** \_\_\_\_\_

**Payment Bond Number** \_\_\_\_\_

Preliminary 20-Day Notice		Deadline	Done
1.	Immediately after contracting, send written request ( <i>Form A</i> ) to owner or general contractor for information needed to serve Preliminary 20-day Notice		
2.	Date when we first furnished labor and/or materials to the project		
3.	Serve Preliminary 20-Day Notice ( <i>Form B</i> ) within 20 days of date on line 2		
4.	Prepare Affidavit of Service ( <i>Form C</i> ) within 30 days of line 3		
5.	If labor and material we provide exceeds, by 20% or more, the amount stated in the Preliminary 20-Day Notice, serve a supplemental notice within 20 days		

**Post-completion notice and action on bond**

6.	Date when we last provided labor or materials to the project		
7.	Immediately serve written notice of the labor and materials supplied and the amount claimed ( <i>Form D</i> ) to the general contractor, owner, lender and surety.		
8.	File suit against contractor and surety on bond within one year of line 6		

**This checklist is not a substitute for specific legal advice. If you have a question about a specific payment, lien, or bond claim issue, contact Kent Lang or Elaine Blunck at 480-947-1911.**

## Payment bond claims on public projects

This commentary is designed to be used with the PUBLIC PROJECT BOND WORKSHEET (see page 13). You may wish to attach a worksheet to each public works job file.

In comparison to mechanics' and materialmen's liens, the steps required to preserve the right to sue on a public works payment bond are fewer; however, they are critical. Therefore, note the date of each step on the worksheet and calendar the next deadlines to preserve your rights as beneficiary on the bond.

The Arizona law relating to contractor claims on public buildings and improvements (A.R.S. §§ 34-222 et seq.) is known as the "Little Miller Act." It is patterned after and generally consistent with the Federal Miller Act, which governs contractor claims on Federal buildings and improvements.

- 1. Immediately upon contracting, send a written request for information.** Send the owner of the property or the general contractor a written request for the information you will need for your Preliminary 20-Day Notice and for information on any project payment bond.
- 2. Serve the Preliminary 20-Day Notice.** A.R.S. § 33-992.01(B) requires service of the written Preliminary 20-Day Notice of lien to:
  - the owner or reputed owner,
  - the original contractor or reputed contractor,
  - the construction lender or reputed construction lender, and
  - the person with whom he contracts.

Send a copy of the Preliminary 20-Day Notice to the payment bond surety as well. In fact, the bond itself may require you to serve the surety. When you receive a copy of the payment bond, review it carefully to make certain that you understand all the conditions for payment.

Prepare the Preliminary 20-Day Notice and serve it in the same manner as described on page 7, by either first-class mail with a certificate of mailing, registered mail, or certified mail, postage prepaid, and addressed to the business or residence of the party served.

- 3. Prepare Affidavit of Service.** You must be able to prove that you served the Preliminary 20-Day Notice. The notice form contains an "acknowledgment of receipt." In the event you do not receive the acknowledgments within thirty days, however, prepare an affidavit of service stating the time, place and manner of service. It's a good idea to prepare the affidavit of service at the same time you serve the Preliminary 20-Day Notice, while the information is fresh. Note that the certificate of mailing or mail receipt must be attached to the affidavit (A.R.S. § 33-992.02). Keep the affidavit in a safe place with a copy of the Notice and the U. S. Postal Service certificate of mailing or delivery receipt.

- 4. Exceeding the 20-Day Notice amount.** When the value of the labor or materials you provide exceeds the 20-Day Notice amount by 20% or more, you must serve a supplemental 20-Day Notice.

The initial Preliminary 20-Day Notice will protect your lien rights only up to 120% of the amount stated in the notice. If the value of your labor or services exceeds the amount stated by more than 20%, you must prepare and serve a supplemental Preliminary 20-Day Notice within 20 days. Serve the supplemental notice in the same way that you served the initial 20-Day Notice (see Steps 2 and 3 above).

- 5. Record the last date when you provide labor or materials under your contract.** This date is critical because it determines the deadlines for the 90-day notice and for filing a lawsuit on the bond. Work done solely to effect repairs, make corrections, or complete a final inspection does not qualify as work on the original contract and will not extend the deadline. Make certain that you have completely performed your contract, and record the date when you complete performance. Then calculate the 90-day deadline for serving your 90-day notice.

- 6. Serve your 90-day notice within 90 days of completing work.** Subcontractors and material suppliers covered by the Miller Act who do not have a contract directly with the general contractor must give a 90-day notice within 90 days after performing work or providing materials under their original contract. Note that work done solely to make repairs or corrections or to complete a final inspection does not qualify as work on the original contract, and it will not extend the deadline.

Serve the notice in the same manner as provided for 20-day preliminary notices (*see Step 3 above*), by either first-class mail with a certificate of mailing, registered mail, or certified mail, postage prepaid, and addressed to the business or residence of the party served.

- 7. File an action on the payment bond within a year.** The time for filing a lawsuit on the payment bond expires one year after the last day on which you perform work under your contract, as described in Step 5. If you are an early provider on the project, this deadline may arrive before the project closes and retention monies become due.

### Public Project Bond Worksheet

**Job** \_\_\_\_\_

**Contractor** \_\_\_\_\_

**Owner** \_\_\_\_\_

**Surety** \_\_\_\_\_

**Payment Bond Number** \_\_\_\_\_

State or local government project

Federal project

**Preliminary 20-Day Notice**

**Deadline Done**

		Deadline	Done
1.	Immediately after contracting, send written request ( <i>Form A</i> ) to owner or general contractor for information needed to serve Preliminary 20-day Notice		
2.	Date when we first furnished labor and/or materials to the project		
3.	Serve Preliminary 20-Day Notice ( <i>Form B</i> ) within 20 days of date on line 2		
4.	Prepare Affidavit of Service ( <i>Form C</i> ) within 30 days of line 3		
5.	If labor and material we provide exceeds, by 20% or more, the amount stated in the Preliminary 20-Day Notice, serve a supplemental notice within 20 days		

**Post-performance 90-day notice and action on bond**

6.	Date when we last provided labor or materials to the project		
7.	If we do not have a contract directly with the general contractor, serve written notice of the labor and materials supplied and the amount claimed ( <i>Form E</i> ) to the general contractor within 90 days of line 6		
8.	File suit against contractor and surety on bond within one year of line 6		

This checklist is not a substitute for specific legal advice. If you have a question about a specific payment, lien, or bond claim issue, contact Kent Lang or Elaine Blunck at 480-947-1911.

**Form A**  
**Written Request to Owner for Information**  
**for Preliminary 20-Day Notice**

[DATE]

[OWNER'S NAME & ADDRESS]

RE: [JOB SITE]

[CLAIMANT NAME]

[CLAIMANT ADDRESS]

[DESCRIPTION OF GENERAL NATURE OF CLAIMANT'S LABOR,  
SERVICES OR MATERIALS TO WHICH THE 20-DAY NOTICE APPLIES]

Dear [OWNER]:

Pursuant to A.R.S. § 33-992.01(I), I request that you provide me with the following information to be used in a Preliminary 20-Day Notice for work performed or materials supplied to the job site identified above. The statute requires that this information be furnished within 10 days of your receipt of this request.

1. The legal description, subdivision plat, street address, or location with respect to commonly known roads or other landmarks in the area;
2. The name and address of the owner or reputed owner of the property;
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 A.R.S. § 33-1003, a copy of the bond and the name and address of the surety company and bonding agent.

If you fail to furnish the requested information, you will be prohibited from raising any inaccuracy in such information in the preliminary twenty-day notice as a defense. Likewise, if a payment bond has been recorded pursuant to A.R.S. § 33-1003 and you do not furnish me with a copy of the bond, I will retain lien rights against the property to the extent any bond claim I might have had is prejudiced as a result of not receiving a copy of the bond.

Please forward the above information to:

[CLAIMANT NAME AND ADDRESS]

Sincerely,

[CLAIMANT NAME]

**Form B**

Page 1 of 2

**Preliminary 20-Day Lien Notice**

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 the owner or reputed owner of the project are:

The name and address of the original contractor are:

The name and address of any lender or reputed lender and/or assigns are:

The name and address of the person with whom the Claimant has contracted are:

This preliminary lien notice has been completed by *(name and address of claimant)*:

*Date:*

*By:*

*Address:*

**You are hereby notified that the Claimant has furnished or will furnish** labor, professional services, materials, machinery, fixtures or tools of the following general description:

in the construction, alteration or repair of the building, structure or improvement located at:

and situated upon that certain lot(s) or parcel(s) of land in \_\_\_\_\_ County, Arizona, described as follows:

The first date on which the claimant provided labor, professional services, materials, machinery, fixtures or tools to the project was:

An estimate of the total price or the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished is:

**Form B**

Page 2 of 2

**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 mechanics' 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:

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.

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.

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

*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* \_\_\_\_\_

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

*Title* \_\_\_\_\_

**ACKNOWLEDGMENT OF RECEIPT OF PRELIMINARY TWENTY DAY NOTICE**

This acknowledges receipt on \_\_\_\_\_ (*date*) of a copy of the preliminary twenty-day notice at \_\_\_\_\_ (*address*).

*Date this acknowledgement is executed:* \_\_\_\_\_

\_\_\_\_\_  
*Signature of person acknowledging receipt, with title if acknowledgment is made on behalf of another person*



**Form D**  
**Post-Completion Notice to Surety on Private Payment Bond**

To (contractor who provided payment bond): \_\_\_\_\_

And To (owner): \_\_\_\_\_

And To (payment bond surety): \_\_\_\_\_

And To (lender): \_\_\_\_\_

YOU ARE HEREBY NOTIFIED that the undersigned Claimant furnished labor, materials, equipment, or services consisting of *(description of general nature of claimant's labor, services or materials supplied)*:

To *(jobsite address)*:

which were used in that certain work or improvement consisting of *(description of construction project)*:

pursuant to Claimant's contract with *(party with whom you contracted)*:

Claimant completed its contract on (date) \_\_\_\_-\_\_\_\_-\_\_\_\_. The amount claimed, after deducting all just credits and offsets, is \$\_\_\_\_\_.

DATED: \_\_\_\_\_

Company \_\_\_\_\_

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**Form E**  
**90-Day Notice for Bonded Public Works**  
 Prerequisite Notice for Actions on Bonded Projects

To (contractor who provided payment bond): \_\_\_\_\_

And to (payment bond surety): \_\_\_\_\_

YOU ARE HEREBY NOTIFIED that the undersigned Claimant furnished labor, materials, equipment, or services consisting of *(description of general nature of claimant's labor, services or materials supplied)*:

To (jobsite address):

which were used in that certain work or improvement consisting of *(description of construction project)*:

pursuant to Claimant's contract with *(party with whom you contracted)*:

Said labor and/or materials were furnished within ninety (90) days prior to this date. The amount claimed, after deducting all just credits and offsets, is \$\_\_\_\_\_.

DATED: \_\_\_\_\_

Company \_\_\_\_\_

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**Notice of Intent to Suspend Work for Non-Payment**

[DATE]

Via Facsimile and Certified Mail

[OWNER'S AND/OR CONTRACTOR'S NAME AND ADDRESS]

Re: [Description of Project]

Dear Sir:

XYZ Contractor has not received payment of its [DATE] and [DATE] applications for progress payment. Presently a total of \$\_\_\_\_\_ is due.

This letter constitutes notice pursuant to A.R.S. § 32-1129.04(B) that unless XYZ receives payment in full of its past-due pay applications, or \$\_\_\_\_\_, on or before \_\_\_\_\_, 2009, XYZ intends to suspend performance of its subcontract the following day, \_\_\_\_\_, 2009.

Under Arizona law XYZ will be entitled to additional payment of any costs it incurs for mobilization resulting from shut-down and start-up of operations.

If you have any questions or wish to discuss this matter, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

[COMPANY]

[Name]

*Lang & Baker helps contractors, subcontractors,  
construction suppliers and property owners  
avoid legal problems ... and provides  
experienced, industry-specific legal assistance in  
a responsive, effective and economical manner.*

FOR ASSISTANCE, PLEASE CONTACT

**Kent A. Lang**

Construction Litigation • Creditors' Rights • Commercial Litigation

**Elaine N. Blunck**

Construction Litigation • Mechanic's Liens • Corporate Law

*The information provided in this handbook is intended to be general in nature and should not be construed as specific legal advice. Reliance on this information by any party does not establish a client relationship with Lang & Baker, PLC. Further, the statutes referenced in this handbook are full of detailed requirements and exceptions. Therefore, this handbook does not contain an exhaustive discussion and is not intended to substitute for specific legal advice in the event you must deal with payment problems.*

## Lang & Baker, PLC

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