

State of Arizona
House of Representatives
Forty-fifth Legislature
First Regular Session
2001

HOUSE BILL 2465

AN ACT

AMENDING SECTIONS 33-992 AND 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, Arizona Revised Statutes, is amended to
3 read:

4 33-992. Preference of liens over subsequent encumbrances;
5 professional services liens

6 A. The liens provided for in this article, except as provided in
7 subsection B of this section or unless otherwise specifically provided, are
8 preferred to all liens, mortgages or other encumbrances upon the property
9 attaching subsequent to the time the labor was commenced or the materials
10 commenced ~~WERE~~ to be furnished except any mortgage or deed of trust that is
11 given as security for a loan made by a construction lender as defined in
12 section 33-992.01, subsection A, paragraph 1, if the mortgage or deed of
13 trust is recorded within ten days after labor was commenced or the materials
14 commenced ~~WERE~~ to be furnished. The liens provided for in this article
15 except as provided in subsection B of this section are also preferred to all
16 liens, mortgages and other encumbrances of which the lienholder had no actual
17 or constructive notice at the time ~~he~~ ~~THE LIENHOLDER~~ commenced labor or
18 commenced to furnish materials except any mortgage or deed of trust that is
19 given as security for a loan made by a construction lender as defined in
20 section 33-992.01, subsection A, paragraph 1, if the mortgage or deed of
21 trust is recorded within ten days after labor was commenced or the materials
22 commenced ~~WERE~~ to be furnished.

23 B. A notice and claim of lien for professional services shall not
24 attach to the property for priority purposes until labor has commenced on the
25 property or until materials have commenced to be furnished to the property so
26 that it is apparent to any person inspecting the property that construction,
27 alteration or repair of any building or other structure or improvement has
28 commenced.

29 C. If no labor commences on a property or no materials are furnished
30 to the property, a registered professional may record and foreclose on a lien
31 at any time after the registered professional's work has commenced if the
32 registered professional's work has added value to the property. If labor or
33 materials are furnished to the property, the priority of the registered
34 professional's lien is governed by subsection B of this section.

35 D. Liens for professional services shall attach not before but at the
36 same time, and shall have the same priority, as other liens provided for in
37 this article.

38 E. If any improvement at the site is not provided for in any contract
39 for the construction of ~~a~~ ~~ANY~~ building or other structure, the improvement
40 at the site is a separate work and the commencement of the improvement is not
41 commencement of the construction of the building or other structure. The
42 liens arising from work and labor done or professional services or materials
43 furnished for each improvement at the site shall have a separate priority
44 from liens arising from work and labor done or professional services or
45 materials furnished for the construction of the building or other structure.

1 A LIEN ARISING FROM AN IMPROVEMENT AT THE SITE HAS THE SAME PRIORITY AS THE
2 COMMENCEMENT OF WORK PERFORMED OR MATERIALS FURNISHED PURSUANT TO THE
3 CONTRACT UNDER WHICH THE IMPROVEMENT AT THE SITE WAS PERFORMED. For purposes
4 of this subsection, "improvement at the site" means any of the following on
5 any lot or tract of land or the street, highway or sidewalk in front of or
6 adjoining any lot or tract of land:

- 7 1. Demolition or removal of improvements, trees or other vegetation.
- 8 2. Drilling of test holes.
- 9 3. Grading, filling or otherwise improving.
- 10 4. Constructing or installing sewers or other public utilities.
- 11 5. Constructing or installing streets, highways or sidewalks.

12 Sec. 2. Section 33-992.01, Arizona Revised Statutes, is amended to
13 read:

14 33-992.01. Preliminary twenty day notice; definitions; content;
15 election; waiver; service; single service;
16 contract

17 A. For the purposes of this section:

18 1. "Construction lender" means any mortgagee or beneficiary under a
19 deed of trust lending funds ~~with which~~ THAT ARE SECURED BY A MORTGAGE OR DEED
20 OF TRUST IF THE MAJORITY OF THE FUNDS LOANED IS INTENDED TO BE USED TO DEFRAY
21 IN WHOLE OR IN PART the cost of the construction, alteration, repair or
22 improvement, ~~is, wholly or in part, to be defrayed,~~ or any assignee or
23 successor in interest of either.

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

26 3. "Owner" means the person, or ~~his~~ THE PERSON'S successor in
27 interest, who causes a building, structure or improvement to be constructed,
28 altered or repaired, whether the interest or estate of the person is in fee,
29 as vendee under a contract to purchase, as lessee, or other interest or
30 estate less than fee. Where ~~such~~ AN interest or estate is held by two or
31 more persons as community property, joint tenants or tenants in common, any
32 one or more of the persons may be deemed the owner.

33 4. "Preliminary twenty day notice" means one or more written notices
34 from a claimant that are given prior to the recording of a mechanic's lien
35 and which are required to be given pursuant to this section.

36 B. Except for a person performing actual labor for wages, every person
37 who furnishes labor, professional services, materials, machinery, fixtures or
38 tools for which a lien otherwise may be claimed under this article shall, as
39 a necessary prerequisite to the validity of any claim of lien, serve the
40 owner or reputed owner, the original contractor or reputed contractor, the
41 construction lender, if any, or reputed construction lender, if any, and the
42 person with whom the claimant has contracted for the purchase of those items
43 with a written preliminary twenty day notice as prescribed by this section.

44 C. The preliminary twenty day notice referred to in subsection B OF
45 THIS SECTION shall be given not later than twenty days after the claimant has

1 first furnished labor, professional services, materials, machinery, fixtures
2 or tools to the jobsite and shall contain the following information:

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

6 2. The name and address of the person furnishing ~~such~~ labor,
7 professional services, materials, machinery, fixtures or tools.

8 3. The name of the person who contracted for the purchase of ~~such~~
9 labor, professional services, materials, machinery, fixtures or tools.

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

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

14 In accordance with Arizona Revised Statutes section
15 33-992.01, this is not a lien and this is not a reflection on
16 the integrity of any contractor or subcontractor.

17 Notice to Property Owner

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

24 1. Requiring your contractor to furnish a conditional
25 waiver and release pursuant to Arizona Revised Statutes section
26 33-1008, subsection D, paragraphs 1 and 3 signed by the person
27 or firm giving you this notice before you make payment to your
28 contractor.

29 2. Requiring your contractor to furnish an unconditional
30 waiver and release pursuant to Arizona Revised Statutes section
31 33-1008, subsection D, paragraphs 2 and 4 signed by the person
32 or firm giving you this notice after you make payment to your
33 contractor.

34 3. Using any other method or device which is appropriate
35 under the circumstances.

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

38 Arizona Preliminary Twenty Day Lien Notice

39 In accordance with Arizona Revised Statutes section
40 33-992.01, this is not a lien. This is not a reflection on the
41 integrity of any contractor or subcontractor.

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The name and address
of the owner or reputed
owner ~~is~~ ARE:

The name and address
of the original
contractor ~~is~~ ARE:

The name and address of
any lender or reputed
lender ~~and/or~~ AND assigns
~~is~~ ARE:

The name and address
of the person with
whom the claimant
has contacted ~~is~~ 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:

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.

1 F. The notice or notices required by this section may be given by
2 mailing the notice by first class mail sent with a certificate of mailing,
3 registered or certified mail, postage prepaid in all cases, addressed to the
4 person to whom notice is to be given at ~~his~~ THE PERSON'S residence or
5 business address. Service is complete at the time of the deposit of ~~such~~
6 NOTICE IN THE mail.

7 G. A person required by this section to give notice to the owner, to
8 an original contractor, to the construction lender, if any, and to the person
9 with whom the claimant has contracted need give only one ~~such~~ notice to the
10 owner, to the original contractor, to the construction lender, if any, and to
11 the person with whom the claimant has contracted with respect to all labor,
12 professional services, materials, machinery, fixtures or tools ~~he~~
13 ~~furnishes~~ FURNISHED for the building, structure or improvement, unless the
14 actual estimated total price for the labor, professional services, materials,
15 machinery, fixtures or tools furnished or to be furnished exceeds by twenty
16 per cent or more the total price in any prior original or subsequent
17 preliminary notice or unless the labor, professional services, materials,
18 machinery, fixtures or tools are furnished under contracts with more than one
19 subcontractor, in which case notice requirements shall be met for all ~~such~~
20 additional labor, professional services, materials, machinery, fixtures or
21 tools.

22 H. If a notice contains a general description required by subsection C
23 of this section of the labor, professional services, materials, machinery,
24 fixtures or tools furnished up to the date of notice, it is not defective
25 because after ~~such~~ THE date the person giving notice furnishes labor,
26 professional services, materials, machinery, fixtures or tools that are not
27 within the scope of ~~such~~ THE general description, or exceed by less than
28 twenty per cent the estimated total price thereof.

29 I. Within ten days after receipt of a written request from any person
30 or ~~his~~ THE PERSON'S agent intending to file a preliminary twenty day notice,
31 which request shall identify the person, ~~his~~ THE PERSON'S address, the ~~job~~
32 ~~site~~ JOBSITE and the general nature of the person's labor, professional
33 services, materials, machinery or tools to which the preliminary twenty day
34 notice shall apply, or within ten days of the receipt of a preliminary twenty
35 day notice, the owner or other interested party shall furnish ~~such~~ THE person
36 a written statement containing the following information:

37 1. The legal description, subdivision plat, street address, ~~OR~~
38 location with respect to commonly known roads or other landmarks in the area,
39 or any other description of the ~~job-site~~ JOBSITE sufficient for
40 identification.

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

42 3. The name and address of the original contractor or reputed
43 contractor.

44 4. The name and address of the construction lender, if any, or reputed
45 construction lender.

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

4 J. Failure of the owner or other interested party to furnish the
5 information required by this section does not excuse any claimant from timely
6 giving a preliminary twenty day notice, but it does stop the owner from
7 raising as a defense any inaccuracy of ~~such~~ THE information in a preliminary
8 twenty day notice, provided the claimant's preliminary twenty day notice of
9 lien otherwise complies with the provisions of this chapter. If the
10 information is received by the claimant after the claimant has given a
11 preliminary ~~twenty-day~~ TWENTY DAY notice and the information contained in the
12 preliminary ~~twenty-day~~ TWENTY DAY notice is inaccurate, the claimant shall,
13 within thirty days of the receipt of this information, give an amended
14 preliminary twenty day notice in the manner provided in this section. ~~Such~~
15 AN amended preliminary twenty day notice shall be considered as having been
16 given at the same time as the original preliminary twenty day notice, except
17 that the amended preliminary twenty day notice shall be effective only as to
18 work performed, materials supplied or professional services rendered twenty
19 days prior to the date of the amended preliminary twenty day notice or the
20 date the original preliminary twenty day notice was given to the owner,
21 whichever occurs first. If a payment bond has been recorded in compliance
22 with section 33-1003 and the owner or other interested party fails to furnish
23 a copy of the bond and the other information as required by this section, the
24 claimant shall retain lien rights to the extent precluded or prejudiced from
25 asserting a claim against the bond as a direct result of not timely receiving
26 a copy of the bond and the other information from the owner or other
27 interested party.