

REFERENCE TITLE: **mechanics' and materialmen's liens.**

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

## **HB 2465**

Introduced by  
Representatives Cooley, Avelar, Carpenter, Hatch-Miller, Hershberger,  
Huffman, Marsh

**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.

1  
2 The name and address  
3 of the owner or reputed  
4 owner ~~is~~ ARE:

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

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

5  
6  
7 The name and address  
8 of the original  
9 contractor ~~is~~ ARE:

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

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

10  
11  
12  
13 The name and address of  
14 any lender or reputed  
15 lender ~~and/or~~ AND assigns  
16 ~~is~~ ARE:

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:

17  
18  
19 The name and address  
20 of the person with  
21 whom the claimant  
22 has contacted ~~is~~ 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.



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.