

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 187
SENATE BILL 1304

AN ACT

AMENDING SECTION 33-992.01, ARIZONA REVISED STATUTES; RELATING TO 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 ~~who~~ 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. ~~Where~~ IF an interest or estate is held by two or
19 more persons as community property, joint tenants or tenants in common,
20 any one 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 ~~prior to~~ BEFORE the recording of a
23 mechanic's lien and ~~which~~ 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 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:

11 And situated upon that certain
12 lot(s) or parcel(s) of land in
13 _____ County, Arizona,
14 described as follows:
15 An estimate of the total price of
16 the labor, professional services,
17 materials, machinery, fixtures
18 or tools furnished or to be
19 furnished is: \$_____

(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 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 I or lose as a defense
2 any inaccuracy of that information.

3 Within ten days of 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 (Company name)
18 By: _____
19 (Signature)
20 _____
(Title)

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

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

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

39 G. A person required by this section to give notice to the owner,
40 to an original contractor, to the construction lender, if any, and to the
41 person with whom the claimant has contracted need give only one notice to
42 the owner, to the original contractor, to the construction lender, if any,
43 and to the person with whom the claimant has contracted with respect to
44 all labor, professional services, materials, machinery, fixtures or tools
45 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 ~~twenty per cent~~ THIRTY PERCENT or more the total price in any prior
4 original or subsequent preliminary notice or unless the labor,
5 professional services, materials, machinery, fixtures or tools are
6 furnished under contracts with more than one subcontractor, in which case
7 notice requirements shall be met for all additional labor, professional
8 services, materials, machinery, fixtures or 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 ~~twenty per cent~~ THIRTY PERCENT the
16 estimated total price thereof.

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

26 1. The legal description, subdivision plat, street address or
27 location with respect to commonly known roads or other landmarks in the
28 area, or any other description of the jobsite sufficient for
29 identification.

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

31 3. The name and address of the original contractor or reputed
32 contractor.

33 4. The name and address of the construction lender, if any, or
34 reputed construction lender.

35 5. If any payment bond has been recorded pursuant to section
36 33-1003, a copy of the bond and the name and address of the surety company
37 and bonding agent, if any, providing the payment bond.

38 J. Failure of the owner or other interested party to furnish the
39 information required by this section does not excuse any claimant from
40 timely giving a preliminary twenty day notice, but it does stop the owner
41 from raising as a defense any inaccuracy of the information in a
42 preliminary twenty day notice, provided the claimant's preliminary twenty
43 day notice of lien otherwise complies with the provisions of this chapter.
44 If the information is received by the claimant after the claimant has
45 given a preliminary twenty day notice and the information contained in the

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

17 Sec. 2. Applicability

18 Section 33-992.01, Arizona Revised Statutes, as amended by this act,
19 applies to construction projects for which labor, professional services,
20 materials, machinery, fixtures or tools are first commenced to be
21 furnished from and after December 31, 2019.

APPROVED BY THE GOVERNOR MAY 7, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2019.