

Fundamentals of Arizona Lien Law

Michael J. Holden
Holden Willits PLC



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Email questions to mholden@holdenwillits.com

WHAT IS A MECHANICS' LIEN?

- **Right Created by Statute**
- **Method to Secure Payment of Obligation**
- **Lien is Distinct from Obligation It Secures**
- **Lien or Security Interest in Building, Improvement or Property Enhanced by Labor or Materials**

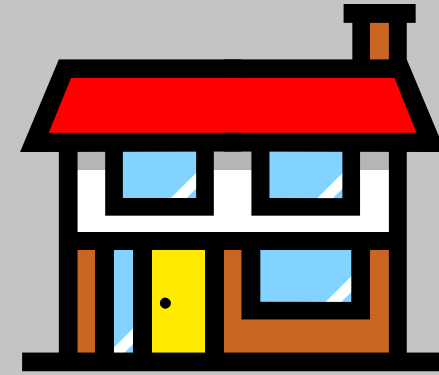
STEPS TO PERFECT A LIEN

- 1. Serve 20-Day Notice**
- 2. Record Notice and Claim of Lien**
- 3. Serve Lien on Owner**
 - within a “reasonable time”**
- 4. File Suit to Foreclose Lien**
 - within six months of recording**

LIENABLE PROJECTS

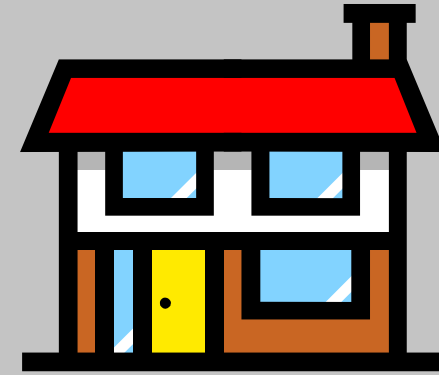
- **Private Construction Projects Only**
- **No Lien Rights on Public Jobs**
- **Leasehold Interests**
 - **If Tenant Contracts for Construction, Lien Rights At Least Against Tenant's Interest**
- **Limited Rights on Owner-Occupied Dwellings**

“OWNER-OCCUPIED” DWELLINGS



**Lien Rights Only If
WRITTEN CONTRACT Directly
with Owner-Occupant**

“OWNER-OCCUPIED” DWELLINGS



Who Is An Owner-Occupant?

Person Who:

- 1. Before Construction Owns Legal or Equitable Title to Property, and**
- 2. Resides or Intends to Reside in Dwelling for At Least One Month During First Year After Construction**



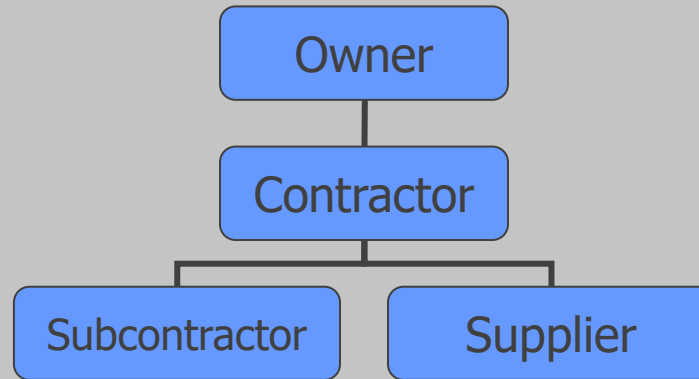
PARTIES WITH LIEN RIGHTS

- **Generally, every person who provides labor, professional services, materials, machinery, fixtures or tools in the construction, alteration or repair of a building or other improvement**
- **BUT THERE ARE LIMITATIONS**

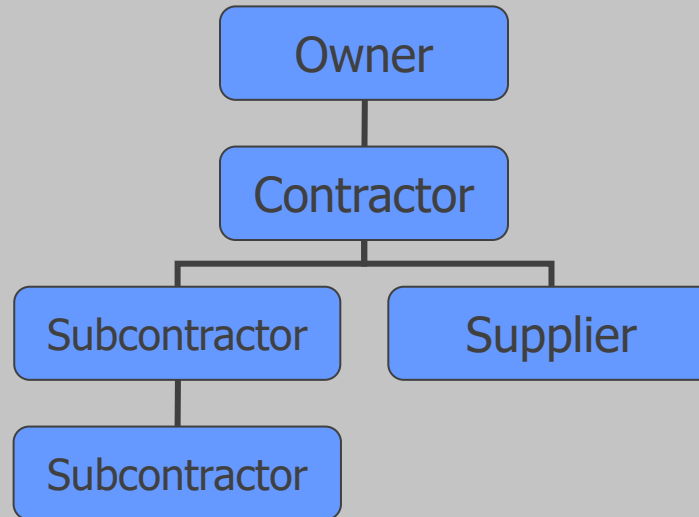
PARTIES WITH LIEN RIGHTS

- **Must furnish labor or materials at the instance of the owner or “owner’s agent”**
- **OWNER’S AGENT: Contractors, subcontractors, architects, builders or other persons “having charge or control of the construction . . . either wholly or in part . . . is the agent of the owner . . .”**

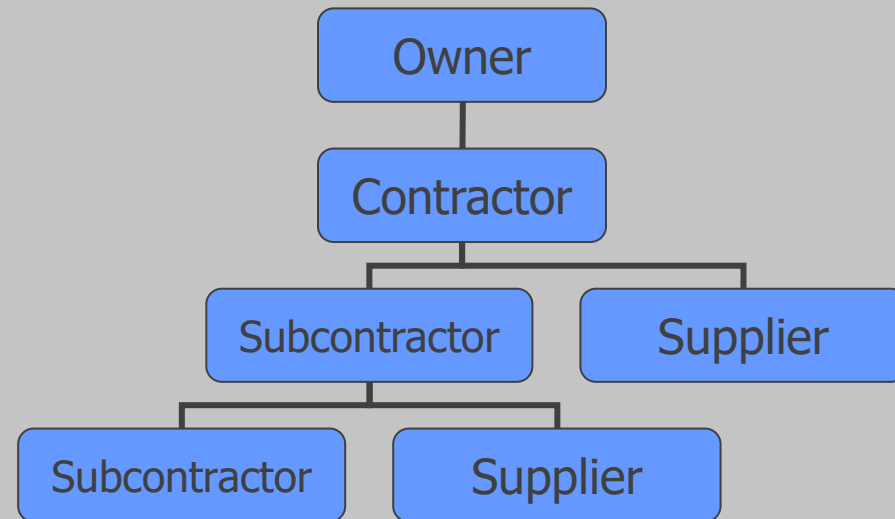
PARTIES WITH LIEN RIGHTS



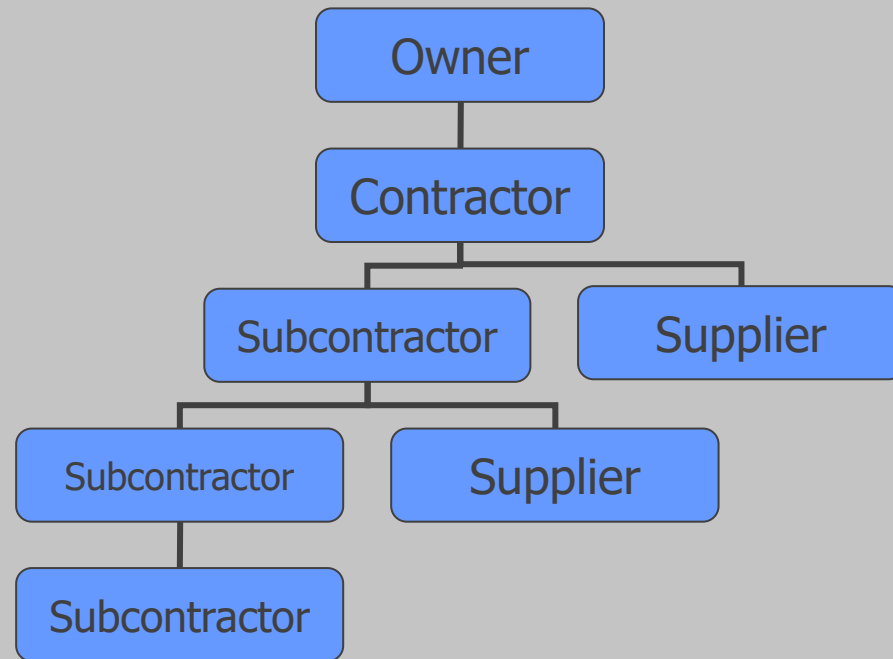
PARTIES WITH LIEN RIGHTS



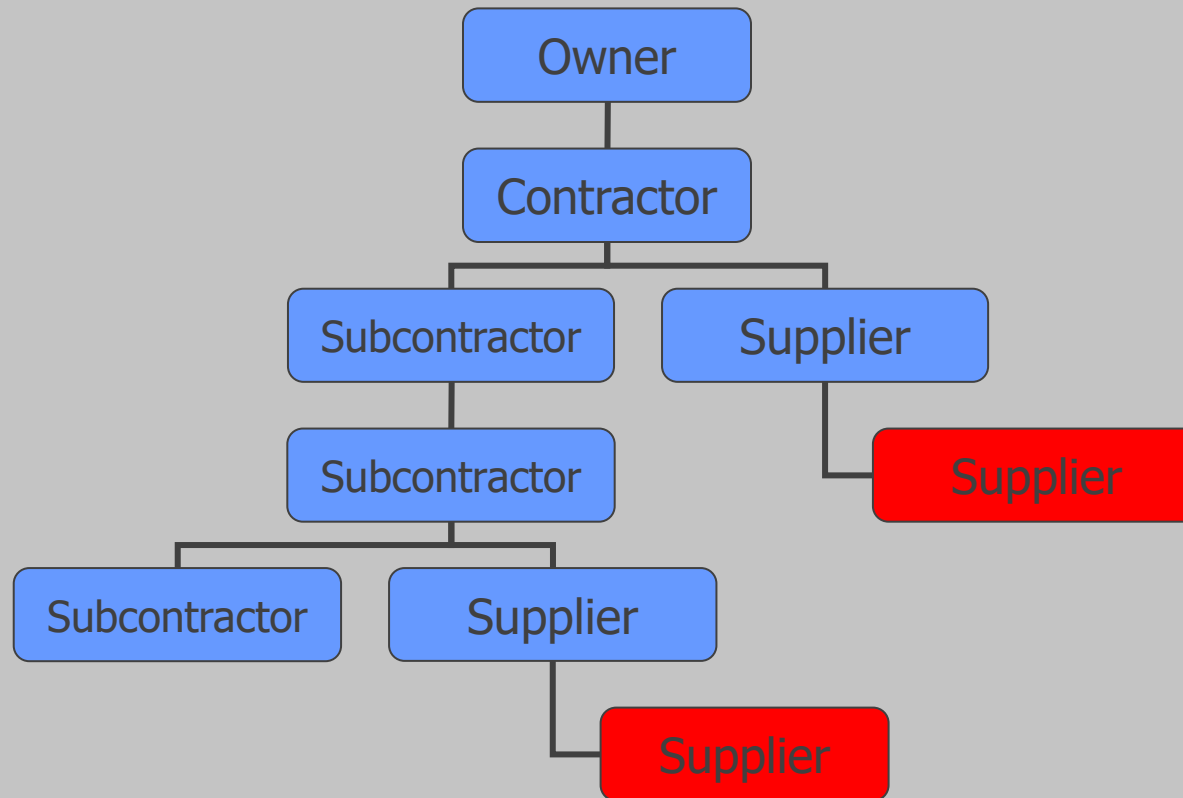
PARTIES WITH LIEN RIGHTS



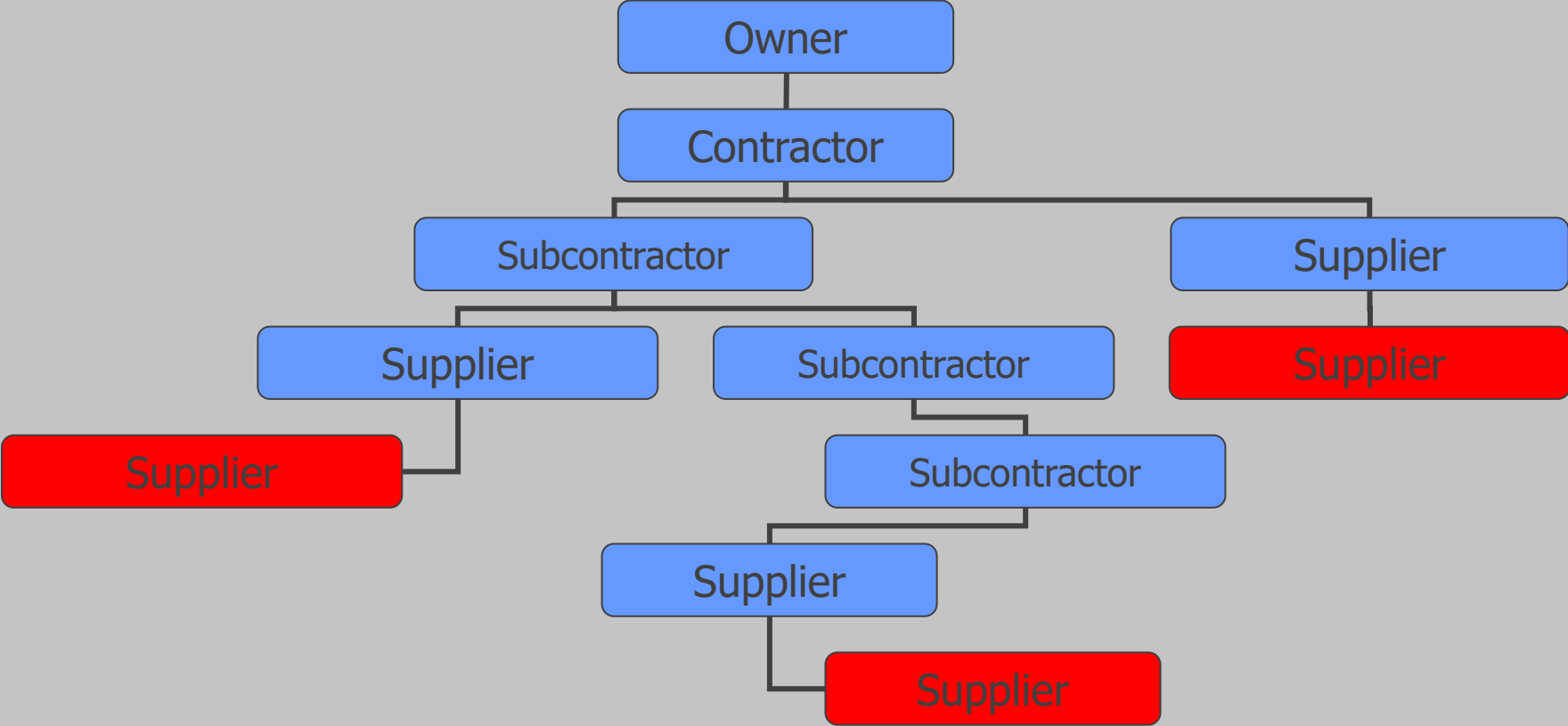
PARTIES WITH LIEN RIGHTS



PARTIES WITH LIEN RIGHTS



PARTIES WITH LIEN RIGHTS





PARTIES WITH LIEN RIGHTS

- **Any person who furnishes labor or material to a subcontractor of any tier has lien rights**
- **Suppliers to Suppliers do not have lien rights**



PARTIES WITH LIEN RIGHTS

- **Contractor Must Be Licensed By Arizona Registrar of Contractors**
- **Work Covered By Lien Must Be Within Scope of License**
- **Unlicensed Contractors Have NO LIEN RIGHTS**



STEPS TO PERFECT LIEN

- 1. Serve 20-Day Notice**



20-DAY PRELIMINARY NOTICE

- **Precondition to Later Recording Lien**
- **Must Be Provided By All Potential Lien Claimants Except Person Performing Actual Labor for Wages**
- **Send to Owner, GC, Lender and Immediate “Up-Chain” Party**



20-DAY PRELIMINARY NOTICE

- **To Have Lien Rights for Entire Project, Notice Must Be Given Within 20 Days After Lien Claimant First Furnishes Labor or Material to Project**
- **If Given Later, Lien Claimant Has Lien Rights for Labor or Materials Furnished Within 20 Days of Notice**

20-DAY PRELIMINARY NOTICE



20-DAY PRELIMINARY NOTICE



20-DAY PRELIMINARY NOTICE



20-DAY PRELIMINARY NOTICE

- 20-Day Form Requires: “An Estimate of Total Price”
- Claimant Has Lien Rights for 130% of that Estimate (changed from 120% in 2019**)
- Second Notice Must Be Sent If Total Furnished Exceeds Estimate By 30% or More

**The legislation provided that the change applies to “construction projects” for which labor or materials “are first commenced to be furnished from and after December 31, 2019.”

Filling Out a Prelim Notice: Sending Second Notice

Estimate	\$10,000
COs	<u>5,000</u>
Total	\$15,000

Filling Out a Prelim Notice: Sending Second Notice

Estimate	\$10,000	\$13,000	
COs	<u>5,000</u>		
Total	\$15,000		\$12,000 if project started before 1/1/2020

Filling Out a Prelim Notice: Sending Second Notice

Estimate	\$10,000	\$13,000
COs	<u>5,000</u>	
Total	\$15,000	
Payment	<u>(\$10,000)</u>	
Owed	\$5,000	

Claimant has lien rights for how much?

Filling Out a Prelim Notice: Sending Second Notice

Payments reduce the amount of the estimate

Estimate	\$10,000	\$13,000
COs	<u>5,000</u>	
Total	\$15,000	
Payment	<u>(\$10,000)</u>	
Owed	\$5,000	
		<u>(\$10,000)</u>
LIENABLE AMOUNT		\$3,000

20-DAY PRELIMINARY NOTICE

- **Owner or Other Interested Party Must Furnish Corrected Information Within 10 Days of Receipt of 20-Day Notice**
- **Legal, Street Address or Other Description**
- **Name and Address of Owner, Contractor and Lender**
- **If Payment Bond In Lieu Recorded**



20-DAY PRELIMINARY NOTICE

**If Owner or Other Interested Party Fails to Give Information,
then Owner Prevented From Raising Inaccuracies in Such
Information as a Defense to Later Lien Claim**



STEPS TO PERFECT LIEN

- 1. Serve 20-Day Notice**
- 2. Record Notice and Claim of Lien**

RECORDING THE LIEN

- **When Must A Lien Be Recorded?**
 - **120 days after “completion” of the building, unless a Notice of Completion is properly recorded and served**
 - **If a Notice of Completion has been recorded, then 60 days after recordation of such notice**



RECORDING THE LIEN

- **triggering date for computing the lien recording deadline is “completion” of the entire project**
- **time period begins to run upon completion of the general contractor's contract and NOT when a particular subcontractor or supplier completes its portion of the work**



RECORDING THE LIEN

Definition of “Completion” for lien purposes

Earliest of the following events:

- 1. Thirty days after final inspection and written final acceptance by the governmental body which issued the building permit for the building, structure or improvement.**
- 2. Cessation of labor for a period of sixty consecutive days, except when such cessation of labor is due to a strike, shortage of materials or act of God.**



RECORDING THE LIEN

Definition of “Completion” if no building permit is issued or if the governmental body that issued the building permit does not issue final inspections and written final acceptances:

”the last date on which any labor, materials, fixtures or tools were furnished to the property”



RECORDING THE LIEN

If a Notice of Completion is properly recorded:

Lien claimant has 60 days after the Notice of Completion is recorded to record its lien

STEPS TO PERFECT LIEN

1. **Serve 20-Day Notice**
2. **Record Notice and Claim of Lien**
3. **Serve Lien on Owner**
 - within a “reasonable time”
4. **File Suit to Foreclose Lien**
 - within six months of recording

ARIZONA'S LIEN WAIVER FORMS

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT
(Pursuant to A.R.S. § 33-1008)

Project: _____

Job No.: _____

On receipt by the undersigned of a check from _____
(Maker of Check)

in the sum of \$ _____ payable to _____
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the job of _____ located at _____
(Owner)

_____ (Job Description)
to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to _____

_____ (Person with whom undersigned contracted)
through _____ (Date) only and does not cover any retention, pending

modifications and changes or items furnished after that date. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

DATE: _____ (Company Name)

By: _____ (Signature)

_____ (Title)

ARIZONA'S LIEN WAIVER FORMS

Four Statutory Lien Release Forms:

- **Conditional Release for a Progress Payment**
- **Conditional Release for Final Payment**
- **Unconditional Release for Progress Payment**
- **Unconditional Release for Final Payment**

ARIZONA'S LIEN WAIVER FORMS

Rules Governing Statutory Forms

- **Owner Cannot Impair Lien Rights by Contract**
- **Lien Claimant Can Only Waive Rights By Executing a Lien Waiver that Substantially Follows a Statutory Form. Any Lien Waiver that Does Not Follow a Statutory Form Is Ineffective**

ARIZONA'S LIEN WAIVER FORMS

Rules Governing Statutory Forms

- **Conditional Form Should Be Used In Exchange for a Payment Check**
- **Conditional Lien Waiver Plus a Cancelled Check Equals an Unconditional Waiver**

ARIZONA'S LIEN WAIVER FORMS

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT
(Pursuant to A.R.S. § 33-1008)

Project: _____

Job No.: _____

On receipt by the undersigned of a check from _____
(Maker of Check)

in the sum of \$ _____ payable to _____
(Amount of Check) (Payee or Payees of Check)

and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien, any state or federal statutory bond right, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the job of _____ located at _____
(Owner)

to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to _____

_____ (Person with whom undersigned contracted)

through _____ (Date) only and does not cover any retention, pending

modifications and changes or items furnished after that date. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

DATE: _____ (Company Name)

By: _____ (Signature)

_____ (Title)

ARIZONA'S LIEN WAIVER FORMS

“ . . . to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to

(Person with whom undersigned contracted)

through _____ only and does

(Date)

not cover any retention, pending modifications and changes or items furnished after that date.”



ARIZONA'S STOP NOTICE

Stop Notice is a distinct remedy, separate and apart from lien rights or claims on payment bonds

The remedy is available to any person who has mechanic's lien rights under Arizona law



ARIZONA'S STOP NOTICE

Stop Notice allows a claimant to serve Notice on the owner or construction lender that the claimant has not been paid and, under certain circumstances, requires the holder of the construction funds to withhold payment up to the amount of the claim

Stop Notice effectively creates a lien on undisbursed construction funds held by the owner or construction lender.



ARIZONA'S STOP NOTICE

Scope:

**the remedy is available to any person who has
mechanic's lien rights under Arizona law . . .
LIENABLE PRIVATE PROJECTS ONLY**

Prerequisite: Must serve 20-day notice



ARIZONA'S STOP NOTICE

Simple Form

**Serve Stop Notice on the owner and/or
construction lender**

By personal service or certified mail

**Form provides notice that claimant has not been
paid and, under certain circumstances, requires
the holder of the construction funds to withhold
payment up to the amount of the claim**



ARIZONA'S STOP NOTICE

Stop Notice provides notice that claimant has not been paid

Under certain circumstances, Stop Notice requires the holder of the construction funds to withhold payment up to the amount of the claim



ARIZONA'S STOP NOTICE

Upon Service:

Owner “shall withhold from original contractor . . . sufficient funds due or to become due to that contractor”

Lender may withhold unless Stop Notice is BONDED



ARIZONA'S STOP NOTICE

BONDED STOP NOTICE:

Bond Amount is 125% of Claim

Bond is security for “costs and damages” that the owner, contractor or lender may sustain by reason of stop notice



ARIZONA'S STOP NOTICE

Must file suit to foreclose stop notice “no later than three months after the deadline for recording liens”

ARIZONA'S STOP NOTICE

ADVANTAGES:

- **Stop Notice Can Be Served When Job Ongoing**
- **Lower Tier Sub or Supplier Now Has Legal Right to Notify Owner or Lender**
- **Undisbursed construction funds may be better security than real property in some cases**