

Statutory Lien Waivers & Releases and Joint Checks

1. Form of W/R must “substantially follow” statutory form, otherwise release may be deemed ineffective and/or may not provide intended protection to owner (A.R.S. § 33-1008)
 - a. Relatively recent appellate decision (unpublished memorandum decision) found use of invoice numbers in place of “through dates” to be substantial deviation from form
 - b. Statutory forms are broadly written and may waive payment rights beyond what you want to release. Additional language may be added to the release to preserve remaining contract/payment rights, but Owners and GCs should **beware that such additional language may constitute a “substantial” deviation under § 33-1008**
2. Always be aware of “through date” on progress form – before signing a release on progress payment, make certain that the stated value equals the actual value of labor and materials furnished through the date stated
3. The value stated in a release on progress payment should not be cumulative or carried forward into subsequent progress releases
4. Do not sign “unconditional” waivers except in exchange for cash or cash equivalent (or until after funds have been actually paid by bank on which check is drawn)
5. “Progress payment” releases do not exclude collecting retention, pending modifications, change order/extra work, or work/materials furnished after effective date of release
 - “Final payment” forms release all claims except “disputed claims for extra work”
6. Owner or general contractor is entitled to a recordable release where lien claim was recorded
7. Joint check – a multiple payee check requiring all payee endorsements before it can negotiated (*i.e.*, deposited in the bank)
 - a. Beware the “joint check rule” – you can unwittingly waive rights to payment by signing a joint check but failing to keep from the check all amounts owed through the time period covered by the check (see, e.g., *Brown Wholesale Electric Co. v. Beztak of Scottsdale, Inc.*, 163 Ariz. 340, 788 P.2d 73 (1990); *United Metro Materials, Inc. v. Pena Blanca Properties, LLC*, 197 Ariz. 479, 4 P.3d 1022 (App. 2000))
 - b. The amount retained from the joint check should match the amount stated in the corresponding progress payment release form
 - c. Legal application of rule often fails to comport with reality of construction payment timing
 - d. When utilizing joint checks, it is often wise to have a joint check agreement and contemporaneous writing that confirms how the joint check funds are being allocated