

Preliminary Lien Notices

1. What they Are, What they Do, and Why they are Important

“Preliminary 20-day notice . . . means a written notice from a claimant that is given prior to the recording of a mechanic's lien. . . .” (A.R.S. § 33-992.01(A))

- a. To secure a valid lien claim, all persons/entities must timely “serve” a prelim
- b. Primary purpose: Provides notice and opportunity for owner to protect and investigate
- c. As practical matter, required for key leveraging tools desired by A/R managers (liens, stop notices, payment bonds, and license bond claims require prelims)

2. Required Contents

- a. General description of labor, professional services, materials, machinery, fixtures or tools furnished, or to be furnished, w/ estimate of total price (§ 33-992.01(C)(1))
 - **lien is limited to 120% of estimate** (A.R.S. § 33-992.01(G) & (H))
- b. Name and address of person furnishing labor/materials/services (§ 33-992.01(C)(2))
- c. Name of person who contracted for materials/services ((C)(3))
- d. Legal, address, or other jobsite description “sufficient for identification” ((C)(4))
- e. Statement in **boldface type** advising and giving notice to owner (last part of notice “shall be in type at least as large as the largest type” on the prelim) – *See sample*

3. Who must Receive Service

- a. Regardless of direct contract - Owner, original contractor, construction lender, and person with whom contracted (A.R.S. § 33-992.01(B))
- b. Reputed vs. actual - public records usually sufficient to establish “reputed” (*Lewis v. Midway Lumber, Inc.*, 114 Ariz. 426, 561 P.2d 750 (App. 1977))

4. How Service must be Made

- a. (1) First class mail w/cert. of mailing, (2) registered, or (3) certified (§ 33-992.01(F))
- b. Service is complete at time of deposit in mail (§ 33-992.01(F))
- c. Proof of mailing = (1) “acknowledgment” form, or (2) affidavit of mailing w/ cert. of mailing (or “receipt of certification or registration”) (§ 33-992.02)

5. When to Serve

Postmarked no later than 20 days after first furnishing labor/materials to the jobsite. Can be served later, but only reaches back 20 days. (A.R.S. § 33-992.01(B) – (F))

6. “Strict” vs. “Liberal” Interpretation and Application of Lien Law

Dichotomy - Lien law is considered “remedial” and subject to liberal construction (including limited protections for inaccuracies via “substantial compliance doctrine”), but is also a “creature of statute” requiring strict application in many aspects (such as time limits). (See, e.g., MLM Constr. Co., Inc. v. Pace Corp., 172 Ariz. 226, 836 P.2d 439 (App. 1992))

7. Relationship to Notices of Completion (“NOC”)

Within 15 days of recording NOC, copy must be mailed (certified/registered) to “original contractor and all persons from whom owner has received [prelim].” (A.R.S. § 33-993(I))

Preliminary Lien Notices (continued . . .)

8. When is an Amended/Supplemental or Separate Prelim Required

A.R.S. § 33-992.01(G) = Potential lien claimant only needs to serve one prelim, unless:

- a. “Actual total” price exceeds by 20% or more the estimated value in prelim, or
- b. Labor/materials/services are “furnished under contracts with more than one subcontractor, in which case notice requirements shall be met for all additional [labor/materials/services]”

9. Liens for “Professional Services”

“Professional services” is not defined in Arizona’s lien statutes, but presumptively means those identified in the BTR statutes (Architects, Assayers, Engineers, Geologists, Home Inspectors, Landscape Architects, Surveyors, Remediation Specialist)

“Professional services” are lienable, provided that all of these conditions are satisfied:

- a. The professional holds a “valid certificate of registration issued pursuant to [the Board of Technical Registration statutes – A.R.S. § 32-101 to 150].” (A.R.S. § 33-981(E));
- b. The professional “has an agreement with the owner of the property or with an architect, an engineer or a contractor who has an agreement with the owner of the property.” (A.R.S. § 33-981(F));
- c. The professional’s services must be furnished “in the construction, alteration, or repair of any building, or other structure or improvement” (A.R.S. § 33-981(A));
- d. The professional complies with all lien perfection steps.

For priority purposes, professional service liens do not attach until labor or materials have “commenced to be furnished ... so that it is apparent to any person inspecting the property that construction, alteration or repair” has commenced.” (A.R.S. § 33-992(B))

- a. Liens for professional services attach at the same time and have same priority as ordinary mechanics’/materialmen’s lien claims (A.R.S. § 33-992(D));
- b. However, if the project stalls and no labor or materials are furnished, the professional may record and foreclose on a lien “if the professional’s work has added value to the property.” (A.R.S. § 33-992(C))