

## **CONSTRUCTION CONTRACTS AND THE PROMPT PAY ACT**

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### **A. MINIMUM ELEMENTS OF A CONTRACT**

The Arizona statutes dealing with the Registrar of Contractors set out nine specific elements that must be in writing in all contracts over one thousand dollars. Failure to include these elements doesn't invalidate the contract, but can affect your rights under the Prompt Pay Act, and can result in disciplinary action against your license.

Arizona Revised Statute § 32-1158 sets out what terms must be included in all contracts over \$1000. SEE ATTACHMENT. These provisions can benefit both the contractor and the property owner by including the estimated start and completion dates as well as payment schedules.

### ***REQUIRED LANGUAGE IN ALL CONTRACTS OVER \$1000***

As noted on the attachment, the following language **must** be inserted in ten point bold font in all contracts of more than one thousand dollars entered into between a Contractor and the Owner of a property (commercial or residential) that is to be improved:

**“Pursuant to Arizona law we are required to inform you of your right to file a written complaint with the Registrar of Contractors for an alleged violation of the Arizona Revised Statutes Section 32-1154, Subsection A. Any complaints must be made within the applicable time period, as set forth in Section 32-1155, Subsection A. The ROC can be contacted at (602) 542-1525, or online at <http://www.azroc.gov>. We request that if any portion of our work is unsatisfactory, you notify us prior to filing a complaint so we can attempt to resolve any concerns.”**

## **B. ARIZONA PROMPT PAY ACT**

The Arizona Prompt Pay Act provides numerous benefits and protections for Contractors. These benefits include a right to timely payment, 1.5% interest per month on unpaid invoices, and the right to stop work for non-payment (after notice).

**The Prompt Pay Act applies to commercial and residential work**, but not to government work.

### **1. Invoicing – Getting the Benefits of the Arizona Prompt Pay Act**

The Act only applies to ***Owner-occupied dwellings if*** the Contractor includes certain language on the front page of all its estimates and invoices.

The statutory language is as follows:

#### **Notice to Owner of Applicability of Arizona Prompt Pay Act**

**(Notice required by Arizona Revised Statutes Section 32-1129.07)**

**Attention: Your obligations to pay your Contractor are subject to the Arizona Prompt Pay Act. That Act is set forth in Section 32-1129, Arizona Revised Statutes, and Section 32-1129.01 through 32-1129.07, Arizona Revised Statutes. The full text of the Statutes are available at your local public law library or the internet. Under the Act, you have the right to withhold all or a portion of a payment to a contractor for a variety of reasons, including defective construction work that has not been corrected. However, in order to do so, you must issue a written statement setting forth in reasonable detail your reasons for withholding payments within fourteen (14) days after the date you receive a billing or estimate. If you fail to issue the written statement within that period, the billing or estimate will be deemed approved. Once the billing or estimate is deemed approved, you must pay the billing or estimate within seven (7) days. Generally, you are limited by the Act to withholding only an amount that is sufficient to pay the direct costs and expenses you reasonably expect to incur to protect you from loss for which the Contractor is responsible. You are encouraged to read the Act in full to know your obligations and rights.**

## **2. What the Prompt Pay Act Covers**

The Arizona legislature adopted the Prompt Pay Act to address concerns in the construction industry over approval and timing of payments, the right to suspend or terminate work, and other payment issues. Many of the timing of payment terms were adopted from the AIA General Conditions, AIA 201-1997. However, the Prompt Pay Act goes much further.

The Prompt Pay Act is only applicable to private construction projects, and when contracting directly with an Owner/Occupant, a Contractor must insert specific statutory language on each billing, or the Prompt Pay Act will not apply.

### **a. Timing of Payment**

Following are important points regarding the timing of payments:

(1) An Owner has fourteen days after receipt of billing to disapprove in writing, or the billing is deemed certified and approved.

(2) If there is no disapproval by the Owner, payment is due seven days after the billing is approved or deemed approved.

(3) Payments from Contractor to Subcontractors are due seven days after receipt of payment from the Owner.

(4) Payments from Subcontractors to sub-subcontractors and suppliers are due seven days after receipt of payment from the Contractor.

An Owner must pay the Contractor within seven calendar days after the Contractor's billing or estimate is certified and approved. A billing or estimate is **deemed certified and approved fourteen days** after the Owner receives the

billing or estimate unless before that time the Owner or Owner's agent issues a **written statement detailing those items that are not certified or approved.**

A.R.S. § 32-1129.01(D).

There is, of course, a flow through from the Contractor to the Subcontractor since the Subcontractors' associations in Arizona had substantial influence on the legislation. A Contractor must pay its Subcontractors and materials suppliers within seven days after receipt of payment from the Owner. A.R.S. § 32-1129.02(B). Further, Subcontractors must pay their sub-subcontractors and suppliers within seven days after receipt of payment from the Contractor. Remember, the Prompt Pay Act requires that payment shall be made for the full amount **received** for such Subcontractors' work and materials supplied based on work completed or materials supplied under the contract.

**b. Timing of Payments**

The Prompt Pay Act can be read to require the Contractor to pay the Subcontractor only those amounts it actually receives from the Owner. A.R.S. § 32-1129.02(A) and (B). The Prompt Pay Act, however, also states that performance by a Subcontractor or supplier entitles it to payment from the party with whom it contracts.

The Prompt Pay Act does allow an Owner to make progress payments later than seven days after the date of billing, or after the estimate is certified and approved if the contract documents clearly state the fact, and the contract contains a "notice of extended payment provision" stating when such payments

will be made. A.R.S. § 32-1129.01(B). This notice must be stamped all over the plans, including bidding plans. A.R.S. § 32-1129.01(C)(2). The contract can also extend the time for the Owner to certify and approve billings and estimates.

If payments from the Owner to the Contractor are delayed, then payments from the Contractor to the Subcontractors and suppliers will be delayed. The same is true for the timing to certify and approve billings or estimates. A.R.S. § 32-1129.01, generally.

Under the Prompt Pay Act, the Owner or Contractor may **withhold payments** from a Subcontractor or supplier for:

- (1) Unsatisfactory job progress,
- (2) Defective construction work and materials not remedied,
- (3) Disputed work or materials,
- (4) Failure to comply with other material provisions of the contract,
- (5) Third party claims filed with reasonable evidence that a claim will be filed,
- (6) Failure of the Contractor or Subcontractor to make timely payments for labor, equipment and materials,
- (7) Damages to the Owner,
- (8) Or, reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum or reasonable amount for retention.

See A.R.S. § 32-1129.01(D). Basically, these requirements are “lifted” from the AIA 201.

It is important to remember that failure of a Contractor or Subcontractor to make prompt payment is grounds for suspension or revocation of their licenses by the Registrar of Contractors. A.R.S. § 32-1129.02(B).

**c. Right to Suspend or Terminate Work**

An important aspect of the statutes for both Contractors and Subcontractors is the Prompt Pay Act provides that a Contractor may suspend its work on a construction project or terminate the contract if the Owner does not make timely payment of the amount certified and approved. A.R.S. § 32-1129.04(A). The Contractor is required to provide written notice to the Owner at least seven calendar days before the Contractor’s intended suspension or termination, and a Contractor shall not be in breach of the contract for suspending performance or terminating the contract for nonpayment.

The Subcontractor also has the right to completely stop work. A Subcontractor may suspend performance or terminate the contract if the Owner fails to make timely payment of amounts certified and approved for the Subcontractor’s work, and the Contractor fails to pay the Subcontractor for the certified and approved work. A.R.S. § 32-1129.04(B). The Subcontractor must provide written notice to both the Owner and the Contractor at least three calendar days prior to suspending or terminating work.

A Subcontractor may suspend performance or terminate a contract if the Owner makes timely payment, but the Contractor fails to pay the

Subcontractor for certified and approved work. A Subcontractor may also suspend performance or terminate a contract if the Owner declines to certify and approve a portion of the Contractor's billing or estimate for that Subcontractor's work, and the reasons for the failure of the Owner to certify and approve are not the fault of, or directly related to, the Subcontractor's work. A.R.S. § 32-1129.04.

**d. Defenses to Termination of Contract**

A Contractor or Subcontractor shall not be in breach of the contract for suspending its performance or terminating the contract for nonpayment. A.R.S. § 32-1129.04(A). This statute provides that a Contractor or Subcontractor that suspends performance is not required to do any further work until it has been paid the amount that was certified and approved. A.R.S. § 32-1129.04(E). The Contractor and Subcontractor are also entitled to any costs incurred for demobilization or remobilization resulting from the shutdown or startup of the project. A.R.S. § 32-1129.04(E).

It is also important to note that no construction contract can alter the rights to receive prompt and timely progress payments. Further, the contract cannot require the application of another state's laws or jurisdiction. A.R.S. § 32-1129.05.

**e. Recent Changes to the Prompt Pay Act**

In 2012, the Arizona legislature changed the Prompt Pay Act to clarify situations in which a Contractor is required to pay a Subcontractor or supplier even if the Owner has withheld payment to the Contractor.

A.R.S. § 32-1129.02(G) states that where the Owner declines to certify or approve billing due to defective work or materials not remedied, and the Contractor does not receive payment sufficient to pay Subcontractors and suppliers, the Contractor still has to pay any Subcontractor or supplier whose work was not the basis for the Owner withholding payment. In other words, if Subcontractors or supplier are not the ones responsible for the Owner withholding payment, then the Contractor is obligated to pay within twenty-one days of when payment would otherwise have been made by the Owner.

### **C. MECHANIC'S AND MATERIALMEN'S LIENS**

Liens are still one of the most reliable methods of securing payment for labor, equipment and materials. Recent changes in the Arizona lien statutes have simplified the process for filing liens. Unlike claims for breach of contract, lien claims attach to the property and provide security for collecting a judgment. Following are some of the important dates to remember for filing liens:

#### **1. Preliminary Twenty Day Lien Notice**

All Contractors and suppliers must serve a Preliminary Twenty Day Notice within twenty days of providing services. The Notice can be served later, but it will only cover the twenty days before being served.



**IMPORTANT:** The courts in Arizona have held that a **Preliminary Lien** Notice **must have the following accurate information:**

(1) **Property Description** – Both the street address and the legal description should be included.

(2) **Description of the Work** – This should be sufficiently detailed. For example, simply stating “remodel” is not enough, the Notice should state: “provide electrical services and labor for kitchen remodel.”

(3) **Estimated Amount of Work** – The Notice should include an accurate amount for labor, materials and services to be provided.

## **2. Increases in Contract Price**

If the labor, materials and/or equipment to be provided increases by more than 20% over the amount stated in the Preliminary Twenty Day Notice, a new Notice must be filed to cover the additional amounts.

## **3. Time for Filing Liens**

A lien must be filed within 120 days after completion of the project. Completion is defined as the earliest of either: one, thirty days after final inspection and written final acceptance by the responsible government agency; or two, cessation of labor for sixty consecutive days unless due to strike, shortage of materials, or act of God.

#### **4. Foreclosing on a Lien**

A lawsuit to foreclose on a lien must be filed in superior court within six months of filing a lien. The foreclosure lawsuit must name all parties with a recorded interest in the property, including banks/lenders, and other lien claimants.

#### **5. Attorney Fees on Lien Foreclosures**

One important thing to keep in mind under the lien statutes is that the court **may** award attorney fees to the prevailing party. In other words, the court has discretion on whether or not to award attorney fees.

### **D. WARRANTY CLAUSES – INSURING AROUND CLAIMS**

An express warranty is a written warranty that states a home or product is warranted to be good for XX number of years. An implied warranty is a warranty that is created by law and says a home or product is expected to last for a certain period of time, and is therefore impliedly warranted for that period.

In order to avoid claims that may arise years after completion, builders can purchase warranty coverage, an insurance policy that covers future problems. By providing a buyer with the availability of insurance, the builder could limit its exposure to claims that arise long after the work is complete.

However, the warranty coverage will likely only apply to the original buyer, and not to any subsequent buyers. In a recent Arizona Supreme Court case, *Sullivan v. Pulte Homes*, the Court held that a subsequent buyer of a

building would not be limited on the right to bring a claim by the eight year statute of repose. The statute of repose serves to cut off any breach of contract or implied warranty claims to eight years after completion of the work. The Court held that since subsequent buyers do not have a contract with the builder, they could not be limited in the time they have to bring a claim. This means that a builder and its subcontractors could be responsible for claims many years after completion (decades perhaps).

#### **E. INDEMNIFICATION**

In construction, indemnity usually flows up the chain of command. In other words, the Subcontractors provide indemnification to the Contractor, and the Contractor provides indemnification to the Owner.

In basic terms, indemnification means you agree to restore, protect, defend, reimburse, pay or hold harmless, the Owner, Contractor, etc. from a claim or loss. The insurance industry, in dealing with construction clients nationwide, identifies three basic forms of indemnification: one, broad form; two, intermediate; and three, limited.

A **broad form indemnification** covers the Contractor or Owner from all losses arising out of the work, even if it is caused by the Contractor's or Owner's sole negligence. These types of broad form indemnities are not allowed (are void) in Arizona in both public and private work because of A.R.S. § 32-1159 and A.R.S. § 34-226. Despite this ban, we frequently see these broad

form clauses contained in construction contracts, especially those tendered from out-of-state Owners or Contractors.

**Intermediate indemnity clauses** are allowed in private work in Arizona and, because they are legal, they can actually be more troublesome than the broad form. If there is an injury or property loss, a Contractor or its Subcontractor is essentially off the hook if it can prove the Owner or Contractor was solely responsible for the loss. A.R.S. § 32-1159. But, if a Contractor or Subcontractor is only partially at fault (even by a minute amount), the Owner or Contractor can be left covering the losses for the entire claim.

Also, in intermediate indemnity clauses there are no requirements that the Subcontractor (the ultimate indemnitor in most projects) actually be negligent to trigger the intended effect.

The third form of indemnity, required in public work due to A.R.S. § 34-226 is the **limited form indemnity clause**. A limited form indemnity clause limits the indemnity obligation to the extent of fault attributable to the indemnitor and, in spite of many protestations, in the long run is usually less expensive for everyone involved. The best way to explain the difference between an intermediate and a limited form indemnity clause is by example.

This is an intermediate form clause:

The Subcontractor shall not be obligated under this agreement to indemnify the Owner or Contractor with respect to the sole negligence or willful misconduct of the Owner or Contractor.

The above clause requires the Subcontractor to indemnify both the Owner and Contractor even if the Owner or Contractor is negligent, but not solely responsible. The Subcontractor ends up covering the loss, instead of the Owner or Contractor even if they are primarily responsible. Usually the loss is covered through the Subcontractor's Additional Insured coverage under its general liability insurance.

Compare the above clause with this limited form indemnity clause, which is contained in AIA A201 Article 3.18.1:

. . . the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses . . . but only to the extent caused by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

As in Arizona common law, under the AIA's limited form of indemnity clause, either the Contractor or the Subcontractor pays only that part or proportion of any claim that results from its negligent act, and no more.

## **F. WAIVER OF CONSEQUENTIAL DAMAGES**

Consequential damages are indirect damages. Direct damages include actual losses due to faulty workmanship, such as the cost for labor, materials and services to replace defective work. Indirect damages are much more difficult to determine, and can include lost profits or rents due to the inability to open a business on time. Because consequential damages are difficult to

prove (and can be costly to litigate), many contracts include a waiver of consequential damages clause.

The AIA 201 General Conditions contain a **mutual** waiver of consequential damages. The damages waived include lost profits, lost rents, loss of use and financing damages. Owners, Contractors and Subcontractors all have different potential consequential damages. Specificity in this area helps to avoid creative claims for damages that were intended to be waived. When dealing with any contract, one should make sure there is a mutual waiver of consequential damages sufficient to protect all parties.

#### **G. LIQUIDATED DAMAGES**

The most common means of addressing consequential damages in conjunction with, or as an alternative to a mutual waiver, is through a liquidated damages provision. Liquidated damages provisions are intended to provide a reasonable estimate of anticipated consequential damages. Usually such damages are expressed as a set dollar figure to be assessed on a per-day basis. However, many contracts fail to adequately define liquidated damages, and explain how they will be enforced. The following factors should be considered in drafting a successful liquidated damages provision:

(1) Are the contemplated damages a reasonable estimate of the actual expected damages, or are they a penalty? Penalty clauses will not be enforceable. It is important to make clear that the amount of liquidated damages was negotiated and represents fair value.

(2) When will liquidated damages start and end? Usually liquidated damages start at an agreed upon date of expected substantial completion. Confusion can arise regarding when liquidated damages stop: is it the date when substantial completion is obtained, or the date of final completion? Will occupancy of the structure stop liquidated damages? These issues should be addressed.

(3) How will liquidated damages be assessed down the line? Often, delays are attributable to more than one party. In many cases, the Owner, Contractor, Architect and Subcontractors have contributed to delays. There should be an agreed upon procedure for apportioning liquidated damages, and determining the effect of delay caused by the Owner or Architect.

## **H. DISPUTE RESOLUTION**

Dispute resolution really begins with dispute avoidance and falls into two categories, mediation and arbitration. Mediation is a non-binding attempt by the parties to settle any claims before moving forward with arbitration or litigation. Arbitration is a substitute for a lawsuit in court, and can have the advantage of being quicker and cheaper than court.

Prior to the commencement of work, and as part of the construction agreement, the parties can agree upon pre-approved mediators and/or arbitrators. Thus, when disputes arise, the parties have already agreed to special mediators/arbitrators for a claim. A mediator can prevent small issues from escalating. The concept of pre-approved mediators and/or arbitrators

should be considered in a dispute avoidance discussion with either the Owner/Contractor, or the Contractor/Subcontractor before the contracts are finalized.

## **1. Mediation**

Mediation clauses are now very much standardized throughout the industry. Generally, before arbitration, the parties agree to mediate pursuant to the terms of their mediation clause. Mediation clauses are now used in both commercial and residential construction, and are similar in both fields.

Following is a sample mediation clause:

Owner and Contractor agree to mediate any dispute or claim arising out of or relating to this construction contract, and any alleged breach of this contract, or for the services or materials provided in relation to this contract before resorting to arbitration or litigation. Any agreement signed by the parties pursuant to mediation shall be binding. All mediation costs will be paid equally by the parties to this contract.

Or, see examples under Paragraph 4.5 of the AIA A201:

4.5.1 Any claim arising out of or related to the contract, except claims relating to ascetic effect and except those waived as provided for in subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

## **2. Arbitration**

If mediation does not work, the parties, by agreement, are often required to arbitrate. Arbitration involves hiring a single arbitrator (sometimes three arbitrators) who will hear all the testimony and review the evidence, and make a decision that is final and binding on the parties. For many parties,



arbitration is a quicker, cheaper way to get a ruling without having to go through the court system where the process can possibly take a year or longer.

Some standardized contracts, such as the AIA, have the American Arbitration Association (AAA) as the designed arbitration process. However, in addition to paying AAA to administer the claim, the parties have to pay the arbitrator separately to hear the claim. This can result in a very expensive process. By pre-selecting an arbitrator and agreeing to the Arizona Uniform Arbitration Act, the parties can avoid the administrative costs of the AAA.

# DAILY LOG

PROJECT \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

ARCHITECT \_\_\_\_\_

DATE \_\_\_\_\_

Description of Work Performed (Equipment on Site):

Time Arrived:

Time Departed:

Employees on Project:

Other Trades On-Site:

Delays/Schedule Impact:

Injuries:

Changes to Work:

Notices/Requests from Contractor/Owner/Architect:

I certify that the above information is complete and accurate.

\_\_\_\_\_  
Supervisor Name:

PROJECT \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

ARCHITECT \_\_\_\_\_

DATE \_\_\_\_\_

**REQUEST FOR INFORMATION NO. \_\_\_\_\_**

FROM: (Name, Co.)	TO: (Name, Co.)
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**FROM SUBCONTRACTOR:**

Subject:

Question:

Suggestion:

Estimated Time (if known):

Estimated Cost (if known): (\$000.00 or N/A)

**REPLY TO SUBCONTRACTOR** | **DATE ANSWERED:**

*The person or entity responding to this RFI represents and confirms the entity which submitted this RFI is entitled to rely on the Reply stated above.*

**Copies to:**

- Project Manager/Construction Inspector
- Architect
- Construction Administrator
- Contractor

**NOTICE OF DELAY**

To: **INSERT**  
Date: **INSERT**

Project: **Insert**

In reviewing the progress to date for the above project, we have been prevented from performing our work as scheduled because **Reason for Delay**. This delay and the factors which contributed to the delay were unanticipated and beyond our reasonable control. Therefore, any damages, liquidated damages or costs associated with this delay or the factors which caused the delay are not attributable to our company.

Accordingly, we request a commensurate extension of time. At this point we estimate the additional time necessary to complete our scope of work is \_\_\_\_\_  
\_\_\_\_\_. In addition, we request compensation for any acceleration, extended overhead, or other impact costs that result.

We hereby request a written directive on how we are to proceed in this matter.

\_\_\_\_\_  
ABC Subcontracting

**Conditional waiver and release on final payment**

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 or payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position, the undersigned has on the job of \_\_\_\_\_

located at \_\_\_\_\_. This release covers the final payment to the undersigned for all labor, services, equipment or materials furnished to the jobsite or to \_\_\_\_\_, except for disputed

(Person with whom undersigned contracted) claims in the amount of \$ \_\_\_\_\_. Before any recipient of this document relies on it, the 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 final payment to promptly pay in full all 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)

(Signature)

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

(Title)

**Conditional waiver and release on progress payment**

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 \_\_\_\_\_ to the  
(Owner) (Job Description)

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

\_\_\_\_\_ through \_\_\_\_\_ only and does not cover any  
(Persons with whom undersigned contracted)  
(Date)

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.

Dated: \_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Title)

**Unconditional waiver and release on progress payment**

Project: \_\_\_\_\_

Job No.: \_\_\_\_\_

The undersigned has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for all labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_ on the job of \_\_\_\_\_  
(Person with whom undersigned contracted) (Owner)

located at \_\_\_\_\_ and does hereby release any

(Job Description)

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 above referenced project 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 not cover any retentions, pending

(Date)

modifications and changes or items furnished after that date. 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.

Dated: \_\_\_\_\_  
(Company Name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.

Unconditional waiver and release on final payment

Project: \_\_\_\_\_  
Job No.: \_\_\_\_\_

The undersigned has been paid in full for labor, services, equipment or material furnished to the jobsite or to \_\_\_\_\_, on the job of (Person with whom undersigned contracted) \_\_\_\_\_

(Owner)

located at \_\_\_\_\_ and does hereby waive and (Job Description)

release any right to 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, except for disputed claims for extra work in the amount of \$\_\_\_\_\_.

The undersigned warrants that he either has already paid or will use the monies he receives from this final 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.

Date: \_\_\_\_\_ (Company Name)

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_  
(Title)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional release form.



**STOP NOTICE**

**To Owner: INSERT**

**To General Contractor: ABC Builders**

This Stop Notice is made pursuant to A.R.S. § 33-1051, *et seq.*

1. Description of labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished by the claimant:

**INSERT**

2. The name of the person to or for whom the labor, professional services, materials, machinery, fixtures or tools were furnished or agreed to be furnished:

**ABC Builders**

3. The amount in value of the labor, professional services, materials, machinery, fixtures or tools already furnished and the total amount agreed to be furnished:

**\$94,848.00 Complete**

4. The amount, if any, of payment received by the claimant for the labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished:

**The amount actually received was \$24,342.66;  
the amount due on contract and due and owing  
as of this time is \$70,505.34.**

5. The name and address of the claimant:

**c/o Durazzo, Eckel & Hawkins, P.C.  
45 N. Tucson Blvd.  
Tucson, AZ 85716**

A.R.S. § 33-1057.A provides:

On receipt of a stop notice pursuant to § 33-1054, the

owner shall withhold from the original contractor or from any person acting under the original contractor's authority and to whom labor, professional services, materials, machinery, fixtures or tools have been furnished or agreed to be furnished sufficient monies due or to become due to that contractor to answer that claim and any claim of lien that may be recorded for that claim unless a payment bond has been recorded pursuant to § 33-1003. If a payment bond is recorded, the owner may withhold the monies.

DATED this \_\_\_\_\_ day of December, 2013.

INSERT

By \_\_\_\_\_  
INSERT, President

STATE OF ARIZONA        )  
                                  )     ss.  
COUNTY OF PIMA        )

INSERT, being first duly sworn, deposes and states:

That he is the President of Kent Mechanical, Inc. and as such is authorized to make this verification; that he has read the foregoing Stop Notice and knows the contents therein to be true and correct according to the best of his knowledge, information and belief.

DATED this \_\_\_\_\_ day of December, 2013.

\_\_\_\_\_  
INSERT

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of  
December, 2013, by INSERT.

\_\_\_\_\_  
Notary Public

HR MATTERS

**EMPLOYEE TERMINATION FORM**

Employee Name: \_\_\_\_\_ Employee SS#: \_\_\_\_\_

Client Company: \_\_\_\_\_ Last Day Worked: \_\_\_\_\_

Reason for leaving (Mark Only One): \_\_\_\_\_ Termination Date: \_\_\_\_\_

- Voluntary Resignation (Have employee complete resignation form)
- Retirement  Temporary Layoff  Permanent Layoff
- Dismissal  Job Abandonment

Explanation: Please be as detailed as possible.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If there were multiple reasons, what was the final incident that resulted in termination?

\_\_\_\_\_  
\_\_\_\_\_

Reminder: Does employee have any of the following you need to collect now?

- Any keys/access cards to the building, desks, file cabinets, etc.
- Company books, credit cards, computer programs, disks, passwords, etc.

Would this employee be recommended for rehire?  Yes  No

Additional Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Manager's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

To ensure accurate processing, please return to Staffing within 7 days.

5. Subcontractor agrees to conform with and comply with all laws, ordinances and regulations of the Federal, State, County, City and other authorities with respect to the performance of its work and to the fulfillment of this Agreement and will pay promptly all fees, taxes, charges, damages and penalties that may be assessed against Subcontractor or against the Contractor on account of the said Subcontractor .

6. Subcontractor shall provide sufficient, safe and proper facilities at all times for the inspection of work by the Architect, the Contractor or his authorized representative. Subcontractor shall, at once, remove all materials and take down and rebuild all portions of the work not accepted by the Architect, Owner or Contractor, upon receiving notice that the Owner, Contractor or Architect rejects said work.

8. Subcontractor agrees to maintain in full force and effect workmen's compensation insurance and comprehensive all risk liability insurance policies naming Contractor as an additional insured in the amount of not less than as required by the specifications, or if not specified, in amounts sufficient to amply protect all parties mentioned in this Agreement; it shall furnish, in triplicate, "Certificates of Insurance" with a ten day cancellation clause. Subcontractor shall provide public liability and property damage insurance, in an amount equal to the General Contractor or the requirements of the specifications whichever is greater. Subcontractor to provide insurance on all materials on the project under his care until substantial completion, for fire, theft and damage of all types, deductible amount to be paid by Subcontractor on all insurance claims he makes.

11. Subcontractor shall comply with all rules and regulations set forth by OSHA and will exercise due diligence and care with regard to the safety facilities and cleanliness in carrying out their work. Once a week, or more often if deemed necessary for job progress by Contractor, Subcontractor will make a thorough clean-up of all residue and debris including the removal from the premises of all such residue and debris that has accumulated on the job as a direct result of the work performed by the Subcontractor. Failure to comply with the provisions of this paragraph within 24 hours after written notice or immediately upon completion of the work by Subcontractor, will be considered as delaying or interfering with the starting, carrying or completion of work by other subcontractors or Contractor, and said Contractor will have the right to furnish equipment and employ such additional manpower as is necessary to put the premises in order and charge the expense thereof, plus 15% overhead and 10% profit against Subcontractor and deduct such expense plus said percentages from this contract and should the

amount or balance due on said contract be insufficient to collect said deficiency then Contractor may withhold funds from any source available to it.