

20 Day Preliminary Notices - Your Best Protection for Payment

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Arizona law and other southwestern states require that every person (except for wage earners) who furnishes labor, professional services, materials, machinery, fixtures or tools to a construction project give prior written notice, generally known as a "20 Day Preliminary Notice," to the owner, construction lender, original contractor and the person the claimant has contracted with. The preliminary notice offers all interested parties and payment bond sureties, the opportunity to be aware of every other party's potential lien rights against a property or claim rights against a payment or license bond.

There is a common misconception that a preliminary notice is only required to preserve and protect claimants' "Mechanic's Lien" rights. However, it is important to understand that it can also protect and preserve the claimant's entitlement to many other statutory remedies. In Arizona, the preliminary notice is not just required to file a lien, but is also a pre-requisite to

preserving the claimant's rights to recover on a contractor's license bond filed with the Arizona Registrar of Contractors and for subcontractors or suppliers to recover against the general contractor's payment bond. In Arizona, a timely filed preliminary notice allows claimants to file a "Stop Notice" to the owner and lender to ensure timely payment of an invoice.

Most states require that the preliminary notice contains statutorily mandated language. The required language for California is vastly different from that of Arizona. Nevada differs from Utah. Unfortunately, many preliminary notice companies and "specialty" software products used to prepare preliminary notices in-house use one standard form regardless of the particular state where the project is located. These forms or companies provide only a national, non-state specific preliminary notice form, which can have dire consequences. Such notices are defective and will not protect your rights to payment.

Claimants must recognize that the time period for filing or serving their preliminary notice varies from state to state. In Arizona, California and Utah, the time is 20 days from first work. In Nevada, the time is 31 days; Washington is 60, and Oregon is 10.

A preliminary notice can never be filed too early, but it surely can be filed too late!

The claimant should prepare and properly serve the preliminary notice at the same time they are preparing their contract, subcontract, proposal or material order. This will ensure that the claimant is protected for any statutory remedies of payment.

Guy W. Bluff is a construction attorney with more than 20 years trial experience. Bluff is also the president of Arizona Lien & Bond Services, Inc. which prepares state specific preliminary notices, mechanic's liens and bond claims throughout the western U.S. <<

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