



From the Desk of H. Lee Goldblatt

The construction boom has made the Valley one of the fastest-growing housing market in America. However, if your not careful, you could get "burned". Following the proper pre-lien laws will put you way ahead of the game. But, please be aware of the following:

RESIDENTIAL OWNER OCCUPIED LIMITATION

There are technical requirements to filing a proper lien claim, should you decide to do so, which I will try and explain. There are also limitations upon your rights to file a lien claim, which carry a penalty under the law if violated. For example, Arizona, and certain other states, do not permit a lien claim on an owner-occupied residence in most instances.

No lien is allowed against the residence of an "owner-occupant", unless the lien claimant has a **written** contract with the owner-occupant. The effect of the statute cannot be waived by contract. The owner must hold title to the property prior to the commencement of construction, and must reside or intend to reside in the dwelling following completion of construction.

LIEN WAIVERS-BEWARE

Be prepared to sign a "conditional" lien waiver and release in exchange for payment direct from the owner; similarly be prepared to make sure that the form does not "unconditionally" waive your remaining rights against the general contractor or a subcontractor unless you have been paid in full. The waiver and release form should clearly state across the top that it is either a conditional or unconditional release of a "progress" or "final" payment. If you want to retain your contract rights and the form lien

release does not accomplish that, you or your lawyer can handwrite in some language to that effect and then initial and date it in the margin.

LIEN WAIVERS

Lien claimants must avoid signing the wrong lien waiver. The following is a description of the four lien waiver forms used in Arizona:

1. Conditional Waiver and Release on Progress Payment lien waivers do not take effect until the claimant has actually received the stated payment. The form indicates that the waiver is not valid until the claimant is paid by the bank on which the check has been drawn.
2. Unconditional Waiver and Release on Progress Payment lien waivers are effective even if the claimant did not receive the stated payment.
3. Conditional Waiver and Release on Final Payment lien waivers applies to situations where the claimant is required to sign before he receives final payment. However, this waiver does not become effective until the claimant has been paid by the bank on which the check has been drawn.
4. Unconditional Waiver and Release on Final Payment lien waivers specifically states the claimant has been paid in full, and is giving up his right to file a lien or bond claim.

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