

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HOUSE BILL 2474

AN ACT

AMENDING SECTIONS 33-1004, 33-1051 AND 33-1062, ARIZONA REVISED STATUTES;  
RELATING TO MECHANICS' AND MATERIALMEN'S LIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1004, Arizona Revised Statutes, is amended to  
3 read:

4 33-1004. Discharge of mechanic's liens; bond; limitations of  
5 actions; discharge of surety; judgment

6 A. After perfection of a lien pursuant to this article, an owner,  
7 including any person who has a legal or equitable interest in the land which  
8 is subject to the lien, a contractor, subcontractor, mortgagee or other lien  
9 creditor, may, either before or after the commencement of an action to  
10 foreclose such lien, cause to be recorded in the office of the county  
11 recorder, in the county in which the land is located, a surety bond in the  
12 form described in subsection B of this section, together with a power of  
13 attorney disclosing the authority of the person executing the same on behalf  
14 of the surety. Upon the recordation of such bond, the property shall be  
15 discharged of such lien whether or not a copy of the bond is served upon the  
16 claimant or he perfects his rights against the bond.

17 B. A surety bond to discharge a lien perfected under ~~the provisions of~~  
18 this section shall be executed by the person seeking to discharge such lien,  
19 as principal, and by a surety company or companies holding a certificate of  
20 authority to transact surety business in this state, issued by the director  
21 of the department of insurance pursuant to title 20, chapter 2, article 1.  
22 The bond shall be for the sole protection of the claimant who perfected such  
23 lien. Notwithstanding any other statute, the surety bond shall not be  
24 executed by individual surety or sureties, even if the requirements of  
25 section 7-101 are satisfied. The bond shall be in an amount equal to ~~one and~~  
26 ~~one half times the claim~~ ONE HUNDRED FIFTY PER CENT OF THE DEMAND SET FORTH  
27 IN AND secured by the NOTICE AND CLAIM OF lien and shall be conditioned for  
28 the payment of the judgment which would have been rendered against the  
29 property for the enforcement of the lien. The legal description of the  
30 property and the docket and page of the lien sought to be discharged shall be  
31 set forth in the bond.

32 C. The principal on such bond ~~shall~~, upon recordation thereof with the  
33 county recorder, SHALL cause a copy of the bond to be served within a  
34 reasonable time upon the lien claimant, and if a suit ~~be~~ IS then pending to  
35 foreclose the lien, ~~THE~~ claimant ~~shall~~, within ninety days after receipt  
36 thereof, ~~SHALL~~ cause proceedings to be instituted to add the surety and the  
37 principal as parties to the lien foreclosure suit. IN ADDITION, ON RECORDING  
38 AND SERVICE OF THE SURETY BOND, ANY MONIES WITHHELD IN RESPONSE TO A STOP  
39 NOTICE OR BONDED STOP NOTICE THAT IS SERVED BY THE LIEN CLAIMANT PURSUANT TO  
40 ARTICLE 9 OF THIS CHAPTER WITH RESPECT TO THE SAME LABOR AND MATERIAL  
41 DESCRIBED IN THE NOTICE AND CLAIM OF LIEN SHALL BE RELEASED PROMPTLY.

42 D. The bond shall be discharged and the principal and sureties  
43 released upon any of the following:

44 1. The failure of the lien claimant to commence a suit within the time  
45 allowed pursuant to section 33-998.

1           2. Failure of the lien claimant to name the principal and sureties as  
2 parties to the action seeking foreclosure of the lien if a copy of the bond  
3 has been served upon claimant. If the bond is served upon the claimant  
4 within less than ninety days from the date claimant would be required to  
5 commence his action pursuant to section 33-998, ~~then~~ the claimant shall have  
6 ninety days from the date he receives a copy of such bond to add the  
7 principal and the sureties as parties to the lien foreclosure suit.

8           3. The dismissal of the foreclosure suit with prejudice as to the  
9 claimant or the entry of judgment in such suit against claimant.

10          E. In an action to foreclose a lien under this article, where a bond  
11 has been filed and served as provided herein, a judgment for the claimant on  
12 the bond shall be against the principal and his sureties for the reasonable  
13 value of the labor and material furnished and shall not be against the  
14 property. **A JUDGMENT FOR THE CLAIMANT ON THE BOND, INCLUDING ANY RECOVERY  
15 FOR INTEREST, EXPENSES, COSTS AND ATTORNEY FEES AWARDED BY THE COURT, SHALL  
16 NOT EXCEED THE PENAL SUM OF THE BOND. IF THE AMOUNT THE CLAIMANT RECOVERS  
17 EXCEEDS THE PENAL SUM OF THE BOND, THE CLAIMANT SHALL ALSO BE ENTITLED TO  
18 JUDGMENT AGAINST THE PRINCIPAL FOR THE EXCESS AMOUNT.**

19          F. In the event a copy of the bond is not served upon the claimant as  
20 provided in subsection C of this section, the claimant shall have six months  
21 after the discovery of such bond to commence an action thereon, except that  
22 no action may be commenced on such bond after two years from the date it was  
23 recorded as provided in this section.

24          G. The county recorder of the county in which the bond and contract  
25 are recorded shall index the bond and contract under the index classification  
26 in which mechanics' and materialmen's liens are recorded.

27          Sec. 2. Section 33-1051, Arizona Revised Statutes, is amended to read:

28          **33-1051. Definitions**

29          In this article, unless the context otherwise requires:

30          1. "Bonded stop notice" means a stop notice that is given to any  
31 construction lender and that is accompanied by a bond executed solely by one  
32 or more surety companies authorized to transact surety business in this state  
33 pursuant to title 20, chapter 2, article 1 in ~~the penal sum~~ **AN AMOUNT** equal  
34 to one hundred ~~twenty-five~~ **FIFTY** per cent of the amount of the claim on the  
35 condition that if the owner, original contractor or construction lender  
36 recovers judgment in an action brought on a verified claim or on the lien  
37 filed by the claimant, the claimant would have sufficient monies to pay all  
38 costs and damages that the owner, original contractor or construction lender  
39 may sustain by reason of the stop notice claim or the lien, not exceeding the  
40 amount specified in the bond.

41          2. "Construction lender" means any mortgagee or beneficiary under a  
42 deed of trust lending funds all or a portion of which defray the cost of the  
43 construction, alteration, repair or improvement or any assignee or successor  
44 in interest of either, or any escrow holder or other party holding any monies

1 furnished or to be furnished by the owner or any other person as a source  
2 from which to pay construction costs.

3 3. "Original contractor" means any contractor who has a direct  
4 contractual relationship with the owner.

5 4. "Stop notice" means a written notice that is signed and verified by  
6 the claimant or its agent and that states in general terms all of the  
7 following:

8 (a) A description of the labor, professional services, materials,  
9 machinery, fixtures or tools furnished or agreed to be furnished by the  
10 claimant.

11 (b) The name of the person to or for whom the labor, professional  
12 services, materials, machinery, fixtures or tools were furnished or agreed to  
13 be furnished.

14 (c) The amount in value of the labor, professional services,  
15 materials, machinery, fixtures or tools already furnished and the total  
16 amount agreed to be furnished.

17 (d) The amount, if any, of payment received by the claimant for the  
18 labor, professional services, materials, machinery, fixtures or tools  
19 furnished or agreed to be furnished.

20 (e) The name and address of the claimant.

21 Sec. 3. Section 33-1062, Arizona Revised Statutes, is amended to read:

22 33-1062. Release of stop notice or bonded stop notice; surety  
23 bond

24 A. An owner, a construction lender or any original contractor or  
25 subcontractor who disputes any stop notice or bonded stop notice may file  
26 with the person on whom notice was served a release bond. The release bond  
27 shall be executed in ~~a penal sum~~ AN AMOUNT equal to one hundred ~~twenty-five~~  
28 FIFTY per cent of the amount claimed in the notice, conditioned for the  
29 payment of any amount that does not exceed the penal obligation of the bond  
30 and that the claimant may recover on the claim, ~~together with any reasonable~~  
31 ~~expenses including attorney fees awarded by the court.~~ A copy of the release  
32 bond shall be served on the stop notice claimant in the same manner required  
33 for the delivery of a stop notice. On the filing and service of the release  
34 bond, the monies withheld in response to the stop notice or bonded stop  
35 notice shall be released promptly. A BOND TO RELEASE A STOP NOTICE OR BONDED  
36 STOP NOTICE UNDER THIS SECTION SHALL BE EXECUTED BY A SURETY COMPANY OR  
37 COMPANIES HOLDING A CERTIFICATE OF AUTHORITY TO TRANSACT SURETY BUSINESS IN  
38 THIS STATE, ISSUED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE PURSUANT TO  
39 TITLE 20, CHAPTER 2, ARTICLE 1. THE BOND SHALL BE FOR THE SOLE PROTECTION OF  
40 THE CLAIMANT WHO PERFECTED SUCH NOTICE.

41 B. IF AN OWNER, A CONSTRUCTION LENDER OR ANY ORIGINAL CONTRACTOR OR  
42 SUBCONTRACTOR CAUSES TO BE RECORDED A SURETY BOND TO DISCHARGE A LIEN  
43 PERFECTED BY THE STOP NOTICE CLAIMANT PURSUANT TO SECTION 33-1004 WITH  
44 RESPECT TO THE SAME LABOR AND MATERIAL DESCRIBED IN THE STOP NOTICE OR BONDED  
45 STOP NOTICE, THE SURETY BOND SHALL ALSO SERVE AS A RELEASE BOND PURSUANT TO

1 THIS SECTION, AND THE MONIES WITHHELD IN RESPONSE TO THE STOP NOTICE OR  
2 BONDED STOP NOTICE SHALL BE RELEASED PROMPTLY ON THE RECORDING AND SERVICE OF  
3 THE SURETY BOND ON THE STOP NOTICE CLAIMANT AS PRESCRIBED IN SECTION 33-1004.  
4 C. IN AN ACTION TO ENFORCE PAYMENT OF A CLAIM STATED IN A STOP NOTICE  
5 OR BONDED STOP NOTICE, WHERE A BOND HAS BEEN FILED AND SERVED AS PROVIDED IN  
6 THIS SECTION, A JUDGMENT FOR THE CLAIMANT ON THE BOND SHALL BE AGAINST THE  
7 PERSON SEEKING TO RELEASE SUCH STOP NOTICE OR BONDED STOP NOTICE AS PRINCIPAL  
8 AND THE SURETY FOR THE AMOUNT THE CLAIMANT RECOVERS ON THE STOP NOTICE OR  
9 BONDED STOP NOTICE CLAIM, INCLUDING ANY RECOVERY FOR INTEREST, EXPENSES,  
10 COSTS AND ATTORNEY FEES AWARDED BY THE COURT, THAT DOES NOT EXCEED THE PENAL  
11 SUM OF THE BOND. IF THE AMOUNT THE CLAIMANT RECOVERS ON THE STOP NOTICE OR  
12 BONDED STOP NOTICE CLAIM EXCEEDS THE PENAL SUM OF THE BOND, THE CLAIMANT  
13 SHALL ALSO BE ENTITLED TO JUDGMENT AGAINST THE PRINCIPAL FOR THE EXCESS  
14 AMOUNT.