

Arizona Court Clarifies Manner in Which 20 Day Notices Must be Served on a State Public Project

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Subcontractors and material suppliers who perform work or supply materials to a public project and do not get paid can initiate a claim process against the general contractor's payment bond. The statutory scheme that allows unpaid subcontractors and suppliers to seek payment from the general contractor's bonding company is called the Little Miller Act.

In order to bring a valid bond claim on a public, non-federal project, the subcontractor or material supplier who does not have a written contract with a supplier must serve 1.) a 20 day notice and 2.) a claim upon the bond within 90 days of last supplying labor or material to the project. The requirement of the 20 day notice has been in effect since 1984. Since its inception, the standard in the construction industry, including the standard of all preliminary notice preparation companies, has been to send all 20 days notices in the same manner. That method has been to serve all 20 day notices via **first class mail with a certificate of service**, stamped or prepared by the U.S. Post Office at the time of mailing.

With this background, in an opinion called *Cemex v. Falcone Bros. & Assoc., Inc.* filed April 30, 2015, the Arizona Court of Appeals ruled that a 20 day notice that is served to perfect a bond claim on a state public project must be sent **certified, return receipt requested**. This change only affects the manner of service of 20 day notices associated with state public bond claims—it does not affect the manner of service of 20 day notices used to perfect a mechanic's lien.

In so ruling, the Court acknowledged that it may be undermining bond claims that are pending. The Court also recognized that its ruling will change the manner of service of these types of 20 day notices.

The Court also reiterated that the 90 day notice must be actually received by the general contractor within 90 days of last supplying labor or materials to the project.

Presumably, you utilize a preliminary notice preparation company to prepare preliminary notices. In the event you need to have your preliminary notice preparation company prepare a 20 day notice for a bond claim, you may want to ask them if they are aware of this required change in standard practice.

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