

# Construction Law Update

## OVERVIEW

### MINIMUM CONTRACT TERMS

1. The Name of the Contractor, its business address and license number.
2. The Name and mailing address of the Owner(s), and the jobsite address or legal description.
3. The date of the contract.
4. The estimated completion date.
5. A description of the scope of work to be completed.
6. The total dollar amount of the contract, including applicable taxes.
7. The amount of any deposit made or to be made.
8. The amount of any progress payment(s) and the stage of construction at which the progress payment(s) are due.
9. That the Owner has the right to file a Complaint with the ROC within the applicable time limitation.

*Note that these are only minimum requirements. Most projects will require and should include additional provisions to protect both the contractor and the project owner.*

### *best practices for*

## Drafting Construction Contracts

### **The New A.R.S. 32-1158**

Effective January 1, 2008, all construction contracts with a project owner for \$1,000.00 or more must advise contain a provision notifying the project owner of its right to file a Complaint with the Registrar of Contractors (ROC).

The relevant portion of the new statute states:

*B. From and after December 31, 2007, any contract in an amount of more than one thousand dollars entered into between a contractor and the owner of a property to be improved shall contain in writing at least the following information:*

*9. That the property owner has the right to file a written complaint with the registrar for an alleged violation of section 32-1154, subsection A. The contract shall contain the registrar's telephone number and website address and shall state that complaints must be made within the applicable time period as set forth in section 32-1155, subsection A. The information in this paragraph must be prominently displayed in the contract in ten point bold type, and the contract shall be signed by the property owner and the contractor or the contractor's designated representative. This paragraph does not apply to a person who is subject to and complies with section 12-1365.*

The statute also sets forth 8 other mandatory provisions, and requires that a project owner be provided legible copies of all contract documents, and a receipt for any deposit, at the time the contract is entered into. A.R.S. s 32-1158(C).

It is important to note that, while the terms are mandatory, a contractor's failure to include them is not a defense to breach, including a failure to make payments. Instead, the failure would likely be treated as an administrative violation, like failing to display a license on advertising materials. The Registrar would likely require a contractor in violation of the statute to provide proof that its contract forms have been corrected to include the required terms.

### **ABOUT THE AUTHORS**

Schern Richardson, PLC was founded in 2006 from several of the Valley's most knowledgeable and respected attorneys. An agile, dedicated legal group, the Firm's practice is devoted to construction, contract, and business law. In the construction law field, the Firm represents contractors, subcontractors, suppliers, and design professionals in all types of construction-related disputes.

The Firm's attorneys represent contractors in judicial and administrative proceedings throughout the State of Arizona. Its clientele is largely contractors, although the Firm has substantial experience representing project owners, suppliers and lenders.