



# THE BASESHEET

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VOLUME 13, NUMBER 4 | FOURTH QUARTER, 2012

## GREETINGS FELLOW ARCA MEMBERS:

ARCA'S 43rd annual convention "It Comes With The Territory" was held at the Prescott Resort the first week in October and it was a great success. The convention committee did an excellent job.

As always, a very special thanks to all our sponsors for their ongoing support. In addition to their yearly sponsorship, almost all of them stepped up and contributed products to the Roofers' Auction, purchased booths and attended trade show. All of these efforts help us produce a quality and profitable event, and all the ARCA contractors need to show their allegiance to those that support us - that means use their services, buy their products, and tell other roofers to do the same. Without them we cannot continue to offer the free safety training or host quality events; they deserve our heartfelt thanks.

Convention is synonymous with our annual business meeting / elections and three valued members with years of service to the organization have moved off the Board: **Alan Lundberg** from **Alan Bradley Roofing**, **Steve Houston** from **Coldwater Roofing**, and **Mike Laufer** from **Roofing Southwest**. We thank them for all they have done to make ARCA the outstanding trade association that it is. We welcome the new Board members: **Dan Grifford (D3)** from **Distinctive Roofing**, **Ron Gibbons** from **Pioneer Roofing**, **Zach Lundberg** from **Alan Bradley Roofing**, and **Eric Skoog** from **Sunvek**.

**Valorie Miller-Brown** from **Jim Brown and Sons** has been the primary convention chair for the last three years and she will be staying on as co-chair of the event but with a bit of reduction in her role. I am proud to announce that **Kim McCunn** from **Western Colloid** will shoulder the responsibility for a great event next October. We will be returning to Prescott again next year and have begun scouting venues to host the 2014 event. Work on next year's convention will start right away and volunteers are needed.

We have several committees focused on improving and protecting our industry. If you're not involved I encourage you become so. We all should make an effort to encourage non members to join our association.

I appreciate the opportunity to serve as your president again and look forward to the upcoming year.

Sincerely,

*Sal Flores*

Sal Flores, President  
Arizona Roofing Contractors Association



WSRCA

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*If you would like more information on workplace safety please contact your Association Coordinator Tod Dennis.*

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## STEPS EMPLOYERS CAN TAKE TO PREVENT WORKPLACE VIOLENCE, KEEP EMPLOYEES SAFE

*SCF Arizona, Your Work Comp Specialist | Provided by Tod Dennis, Association Coordinator*

Recent violent incidents in public places are reminders that violence can happen anywhere, including at work. An angry co-worker may come to work with a gun. A cab driver could be shot by a passenger over taxi fare. A customer may demand cash from an employee who is closing the store. An irate patient may take a swing at a nursing attendant.

Arizona workers may face harassment, intimidation, threats and verbal abuse as well as physical assault, all of which are considered hazards by the Occupational Safety & Health Administration (OSHA).

Employers and their workers need to be alert to the signs of potential aggression and factors that can contribute to sudden workplace violence. While no single motive may explain what prompts a person to commit violence (for example, crime often is random), there are factors that contribute to violent acts:

- Job-related stress (harassment or bullying) or frustration
- Revenge for being fired or rejected for promotion
- Fear of losing a job
- Romantic interest that is rejected by a co-worker
- Family or money problems

According to the National Institute for Occupational Safety and Health (NIOSH), workplace violence accounted for 18 percent of all violent crime from 1993 to 1999.

Most anyone can be pushed to their limit, and potentially beyond to violence. At your place of business, it could be a customer, a co-worker or a visiting delivery person. Paying attention to what people say and do is key to preventing an act of workplace violence. While not all of the possible warning signs on this list may end in a violent incident, it is best to keep them in mind and be cautious should such behavior occur at work. Be aware if a person:

- Uses an angry or threatening tone
- Shouts, screams or curses
- Challenges rules or authority
- Makes unreasonable demands
- Talks irrationally
- Paces nervously
- Uses violent gestures or breaks objects
- Carries a weapon
- Stammers, slurs speech or shows other signs of being under the influence of drugs or alcohol

SCF Arizona and NIOSH recommend employers train workers in recognizing these types of behavior, but there are also other ways to ensure the safety of your workplace:

- Physical separation of workers from customers and visitors to reduce the chance of physical attack
- Bullet-resistant barriers and enclosures might be used in jobsites such as emergency rooms, banks, social service agencies, taxicabs and convenience stores
- Use locked drop safes, minimize the amount of cash kept on the premises, and post signs stating so to deter robbers
- Ample lighting and visibility in high-risk work areas
- Restriction of entry/exit points and safety devices to use in case of emergency
- Safety devices such as close-circuit cameras, alarms, key-card entry systems and geographic locating devices
- Appropriate staffing, including security guards, receptionists and safe operating procedures, especially concerning the carrying of money or storing of materials

Employers would be wise to develop a workplace policy - included in an employee handbook - that sends a clear message that violence will not be tolerated and is never a part of doing business. Your policy should cover reporting violent incidents, threats and behaviors, whether observed inside or outside business. Training in use of security devices, in how to protect yourself and others in a dangerous situation via nonviolent response and conflict resolution, plus first-aid treatments can all contribute to prevention of workplace violence. And in the aftermath of violence, an employer could use community resources, such as counseling, to mitigate its impact.

If a violent act should occur in your place of business, report it immediately, as ignoring or not taking an incident seriously could lead to serious injuries and tragedy.

SCF Arizona offers a free safety training card, "Preventing Workplace Violence." Visit [scfaz.com](http://scfaz.com) and fill out the Safety Materials Order Form online to receive this and other workplace safety training materials.

NIOSH also has case studies and streaming videos for employers to use in developing policies that help prevent workplace violence.

### WORKPLACE VIOLENCE STATISTICS

- Between 2005 and 2009, police officers, security guards, and bartenders suffered the highest rates of workplace violence.
- Strangers committed the greatest proportion of nonfatal workplace violence against men (53 percent) and women (41 percent) between 2005 and 2009.
- About 70 percent of workplace homicides were committed by robbers and other assailants while an estimated 21 percent were committed by co-workers and associates between 2005 and 2009.

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### Making a Job Site Safe

Safety should always be on your mind. Many hazardous conditions can be eliminated when you set up safely and if you think safety.

- Minimize the exposure to the building and pedestrians by using barricades, flashing lights and signs when necessary.
- Locate equipment where fumes and dust will not be drawn into fresh-air intakes and windows of nearby buildings.
- Check to be sure that you have a first-aid kit and fully charged fire extinguishers. Know their locations.
- Maintain proper clearance from all power lines. Notify the electric company so that overhead wires can be covered or de-energized, if necessary.
- Find out where the nearest hospital, infirmary or ambulance service is located. Post the telephone numbers where you will be able to find them in a hurry.



### Housekeeping

One of the easiest ways to prevent accidents is to maintain a neat and orderly job site. Professional roofing crews take pride in maintaining a clean work site.

- Materials must be neatly stacked and placed away from foot traffic.
- Materials and equipment must not be stored within 6 feet from the edge of the roof
- Tools and equipment must be put away after use.
- Where necessary, wheels on rolling equipment should be blocked.
- Trash and scrap are fire hazards and must be collected and disposed of immediately.
- All flammable liquids must be stored in an approved safety can.

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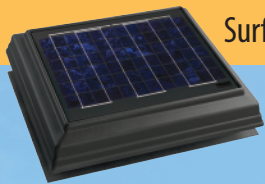
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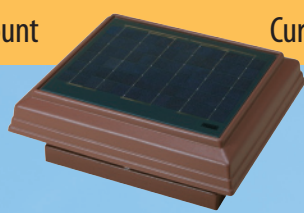
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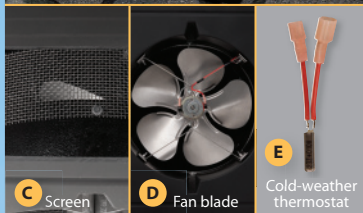
**B** High-performance housing molded with UV-stabilized ABS color-dyed plastic to prevent damage from sunlight and provide stability. May be painted to match roof color.

**Heavy-duty motor** whisper-quiet direct-current variable-voltage 1-36 VDC hardened stainless steel shaft and zinc-plated steel motor housing, dynamically balanced for excellent performance.

**C** Screen 1/8" heavy-gauge stainless steel screen provides protection from insects and animals without impeding airflow.

**D** Fan blade 12"-diameter one-piece aluminum 5-blade fan operates with no harmonic noise.

**E** Optional cold-weather thermostat automatically disengages the fan when the temperature falls below 50°F. This is particularly useful in regions that experience a significant amount of cold dry air.



Mount	Color	Model #
Surface	Black	31001286
Surface	Brown	31001287
Surface	Weathered Wood	31001288
Curb	Black	31001281
Curb	Brown	31001282
Remote	Black	31001284
Remote	Brown	31001285
Gable	Black	31001283
Thermostat	N/A	31001280

All housing material is UV-enhanced ABS plastic and may be painted to match roof color. All models available with optional cold-weather thermostat.

\*1,600 sq. ft. based on 3/12 roof slope with open attic space. For larger areas, multiple ventilators will be necessary. The number of ventilators required will vary depending on roof slope, attic configuration and sq. ft. of open air inlets. For the ventilation requirements of your building, please contact an architect or building professional.

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# Legislative Update



## State of Arizona:

With Republican Governor Brewer locked in for two more years and both the House and Senate predicted to be controlled by the Republicans after the November elections, it should be a pro-business cohesive body at the state capital come January. (Don't hold your breath that will happen anytime soon though.) In the short term, they are going to get sidetracked on National Guard reform and then the marginal majority vote held by the Republicans will ensure little will be accomplished. ARCA along with its partnering trade associations at the AZ State Contractors Coalition will once again try to make inroads in establishing "proportional liability". Basically, you and your company can only be held liable for the percentage of the damages you contributed to or were responsible for. This liability cannot be shifted based on deep pockets, insurance coverage availability, or any other contractual mechanisms general contractors use to shift liability to subcontractors for the damages incurred.

## Federal:

Congress is now in recess as lawmakers are back in their home districts and states campaigning full-time for the rapidly approaching elections on November 6th. Below is a brief analysis of the status of the elections with less than one month before voters head to the polls, along with several legislative and regulatory developments of interest to the roofing industry.

### Presidential Election

With one month to go before the election, the latest polling data indicates that Republican presidential candidate Mitt Romney's strong performance in the debate with President Obama appears to have transformed the race. During September, the president held a consistent but small lead in most polls in the key battleground states and had built a lead of up to eight points in the critical swing state of Ohio. However, a wide range of polling data since the debate shows Romney drawing even or slightly ahead of the president in many of the battleground states and bringing Ohio to a virtual tie. Moreover, a national poll released on Monday by the Pew Research Center that had given the president an eight-point lead among likely voters in mid-September now indicates Romney leads 49-45, a dramatic 12-point swing. Another factor to consider is whether the economic data released on Friday, which indicated tepid job growth in September but a significant drop in the unemployment rate to 7.8 percent, will affect voters' views. The next round of jobs and unemployment statistics will be released Nov. 2, the Friday before the election.

### Senate Elections

It appears the battle for control of the Senate in the new Congress that will convene in January will go down to the wire. Democrats currently hold the majority with a 53 to 47 seat advantage, so Republicans need a net pick-up of four seats (or three if Romney wins the White House, as the vice president breaks tie votes in the Senate) to take majority control next year. During the past month, the number of competitive Senate seats has expanded to more than a dozen, with the candidates in toss-up races in at least half of these seats. Republicans will have to win nearly all of the closest Senate races and not be upset in any race in which their candidate is favored to net the three- or four-seat pick-up they need to gain a Senate majority.

### House Elections

Looking at the status of House races, it appears Republicans will retain control of the House in the new Congress in 2013, where they now have a 25-seat majority, barring a major change in the political environment during the next month. Most political analysts agree Democrats would have to win about 35 Republican-held seats, because it appears they are likely to lose 10 current seats of their own, to win the 25 seats needed to gain a majority. Based on current generic ballot polling figures, it appears Democrats would net a gain of eight seats if the election were held today, but the polling is so close, a range of outcomes still are possible.

### Tax Rates

Congress recessed for the elections without taking action to deal with more than \$500 billion in tax increases and more than \$100 billion in spending cuts scheduled for Jan. 1, 2013. The nonpartisan Congressional Budget Office has predicted this "fiscal cliff" of tax increases and spending cuts could cause a recession in 2013 if Congress fails to take action before the end of the year. A coalition of business organizations sent a letter to Congress and the president urging immediate action to avert a crisis that could be brought on by massive tax increases in a weak economy. Congress members now are working behind the scenes to structure a possible bipartisan deal to prevent most if not all the tax hikes when Congress convenes a "lame duck" session after the elections, but the election results will be a large determinant in the outcome.

### EPA Lead Paint Regulations

In September, the Environmental Protection Agency (EPA) announced it is delaying plans to develop a Lead Renovation Repair and Painting regulation for commercial and public buildings for nearly three years—until July 1, 2015. Moreover, any final rule with regulatory impact is not expected to be issued until at least Dec. 31, 2016. The agency made the decision as part of an ongoing settlement agreement with litigants. 🏠



*By Mary Coultrap, LEED AP*

LCA, PCR, EPD and EPP are the newest ways for evaluating sustainable products and systems and will be showing up on LEED v4 expected out in June 2013.

#### **Life Cycle Assessment (LCA)**

Life Cycle Assessment is a technique to assess environmental impacts associated with all the stages of a product's life from-cradle-to-grave (i.e., from raw material extraction through materials processing,

manufacture, distribution, use, repair and maintenance, and disposal or recycling). LCA's can help avoid a narrow outlook on environmental concerns by compiling an inventory of relevant energy and material inputs and environmental releases; evaluating the potential impacts associated with identified inputs and releases, and interpreting the results to help you make a more informed decision.

#### **Product Category Rule (PCR) and Environmental Product Declaration (EPD)**

A Product Category Rule is a set of protocols for reporting and validating the environmental impacts of products in an Environmental Product Declaration (EPD). PCRs are based on LCA studies of the product in question and are used to establish the life cycle boundaries of the product. Currently, almost all PCRs are designed to comply with ISO standards for environmental impact reporting, including ISO 21930, Environmental Declaration of Building Products and ISO 14025, Environmental Labeling and Declarations Type III Environmental Declarations, and ISO 14040, Environmental Management – Life Cycle Assessment .

Unlike self-declarations often used by manufacturers to claim environmental benefits related to a product or its use, EPD's require independent validation of a product's environmental impact. EPD's promote greater transparency of important environmental impact information and ease buyers' efforts to make objective comparisons among similar products.

#### **Environmentally Preferable Product (EPP)**

EPPs typically are evaluated against a list of desired product characteristics and certified to meet a certain number of these characteristics. UL Environment's new standard UL 115 for Sustainable Thermal Insulation is an example of such a standard.

#### **Use of LCA in Building Design**

Standards and codes in the building industry using LCA include the International Green Construction Code, ASHRAE Standard 189.1, and California's new Green Building Standards Code (CalGreen). However, the highest profile LCA adopter is the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) green building rating system. LEED is currently being revised for a June 2013 release to officially integrate LCA into the rating system. Two new Materials and Resources credits for using EPD products in buildings are expected to be in LEED v4. Pursuing these credits will reward building designers for making environmentally sound design choices.

For further information on LCA you can go to <http://www.life-cycle.org/?tag=epds>

For further information on EPD's you can go to <http://www.environmentalproductdeclarations.com/>

For further information on EPP visit <http://www.gsa.gov/portal/content/105365> and <http://www.epa.gov/epp/>

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## It Comes With the Territory: ARCA's 43rd Annual Convention and Trade Show

The theme of this year's Convention and Trade Show was "It Comes with the Territory", in honor of the 100-year anniversary of the Arizona territory being admitted to the United States. (Coincidentally, this year's event was held at the Prescott Resort in Prescott, which was the first capital of Arizona.) It was a warm and rejuvenating reunion for all who attended, beginning with a golf championship and sporting clays tournament on Thursday morning. Once the evening set in, everyone gathered at the Get Acquainted Party, held at the scenic Granite Creek Park with special entertainment provided by Kianna Martinez and the Lost in Austin Band.

The first part of Friday was filled with more sporting and recreational activities, including the golf invitational, another sporting clays tournament, and last but not least the bingo social. (See Page 11 for sporting event scoring results.) Then it was time for ARCA's popular Trade Show event, where ARCA vendors had an opportunity to showcase their products to old and potential customers.

Saturday morning opened up with educational seminars presented by **Jerry Brown (WRECORP)** and **Michael Hasenkamp (National Bank of Arizona)**. Following their presentations was ARCA's Annual Luncheon and then the Annual Awards and Installation Banquet, where ARCA Members were awarded for their dedication and generosity, and also where our 2012/13 ARCA Board of Directors was sworn in.

Then it was off to the Eagle's Nest Lounge for drinks, laughter, and dancing, where **Kirk Snow (Inca Roofing)** DJ'ed another fun-filled after-party to close out the weekend.

*Many thanks go out to everyone who participated in this year's convention; we hope you found it to be enjoyable and worthwhile. Much gratitude is also extended to the ARCA convention committee for their hard work in carrying out this year's event plans. Lastly, a very sincere thank you to **Valorie Miller (Jim Brown & Sons Roofing)** and **Kim McCunn (Western Colloid)** for your dedication and leadership in planning and preparing for another successful convention and trade show.*



# 2012 Annual ARCA Awards

## *Special Presentation of Annual ARCA Awards*

The Arizona Roofing Contractors Association held its 43rd Annual Convention and Election of 2013 Board of Directors on October 6th at the Prescott Resort. Special awards recognizing the Roofer of the Year, Associate Member of the Year, Volunteer and Committee Chair of the Year were awarded.

Roofer of the Year: **Lyons Roofing**, Phoenix, AZ -- Award accepted by **Rhonda & Paul LaNue**, Principles, for strict adherence to workmanship standards, exemplary ethics in all business dealings, corporate citizenship, and integrity and conduct that reflects positively on the roofing industry.

Associate Member of the Year: **WRECORP** -- Accepted by **Jerry Brown**, Principle, for development and underwriting of worker safety training, corporate citizenship, and long standing support to improve the quality of roofing products and workmanship performed for AZ consumers.

Committee Chair of the Year: **Rick Cornish / Freelite** for years of exemplary service as Membership Chair, making outreach to non-members to solicit their involvement. When ARCA lost a key contributor to the golfing events, Rick stepped up and has served as Golf Committee Chair for the last three years.

Volunteer of the Year: **Kirk Snow / Inca Roofing** has been active in the Youth at Risk and Convention Committees. Kirk does it all and has been our talented DJ at events for years.

Special Life Membership Award: **Ernie Duran / Can't Strip Corp. of America** was awarded life membership in ARCA. Long time supporter, sponsor, advocate, and friend of roofing professionals, Ernie is only the tenth inductee into the elite "Life Member" designation in ARCA's 43-year history.



# ARCA Convention Scoreboard

## Sporting Clays Tournament Results

	Thursday Event	Friday Event
1st Place	Zach Lundberg	Zach Lundberg
2nd Place	Gene Warner	Lynn Harding
3rd Place	Dave Metz	Gene Warner

## Horseshoes Tournament Results

1st Place	Scott Lander and Duane Yourko
2nd Place	Paul LaNue and Craig Nelson
3rd Place	Jeff DeWeese and Mike Mergener

## Golf Championship Scoring Results

1st Place	Jeff Sommer - 72	Closest to Pin	AJ Beban
2nd Place	George Keeley - 74	Longest Putt	Fernando Chavez
3rd Place	Dave Eyer - 76	Longest Drive (Woman)	Bobbi Jo Huskey
4th Place	Greg Marrs - 76	Longest Drive (Man)	Jeff Sommer

## Golf Invitational Scoring Results

1st Place	Dave Eyer, George Keeley, Jeff Sommer and Bob Knox - 117	Closest to Pin	Greg Marrs and Laney Maxam
		Longest Putt	Fernando Chavez
2nd Place	Scott Hailes, Brad Quinett, Pete Schmutz and Brian Dembowski - 126	Longest Drive (Woman)	Bobbi Jo Huskey
		Longest Drive (Man)	George Keeley



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## Top 5 HR Compliance Concerns for Small Business

termination lawsuit can run up to \$85,000, and that winning plaintiffs receive judgments averaging \$500,000.

### 2. Current Benefit Regulations and Laws Not Being Followed

The cost of compliance with benefits regulations is often a bigger burden for small companies, primarily because the associated overhead expense is spread over a smaller workforce. According to a U.S. Small Business Administration survey, small companies spend up to 80 percent more per employee on federal regulatory compliance than large

companies. Poor management of personnel-related tasks can make compliance even more costly.

For the small business owner who offers retirement and health and welfare benefits, keeping up with all the new regulations and changing laws can be daunting. The required tests must be conducted, plan provisions must be properly applied, required notices and documents must be provided to employees, and all required government filings must be completed. Plus there's the alphabet soup of HIPAA, COBRA, FMLA, and the rest to consider.

### 3. Multiple HR Policies and Procedures to Follow with No Qualified Guidance

For a small to medium-sized business, the human resource "department" is usually one person who wears many hats. This HR generalist may be responsible for compensation and benefits, HR management, labor relations, legal issues, staffing, HRIS, training and much more. Besides, keeping up with all of these tasks, thorough independent research often falls into the "nights and weekends" environment, which can become both costly and time consuming.

While a typical HR generalist may know a bit about everything, rock solid HR guidance is crucial given the constant presence and oversight of entities such as the Internal Revenue Service (IRS), the Department of Labor (DOL), or the EEOC. The old adage "ignorance of the law is no defense" certainly applies when a company is faced with an audit, an investigation by a government agency, or even litigation. This is particularly true when areas of concern include everything from compensation and benefits to staffing and workers compensation issues. An HR generalist who makes the wrong decision about a crucial employee issue – even something as simple as asking

As the economic horizon continues to shift and belts tighten, small and mediumsized companies – who typically have between 10 to 500 employees and represent 99.7 percent of all employer firms according to the U.S. Small Business Administration (SBA) – may wind up being so focused on core business issues that they overlook one of their most potentially serious and costly issues – human resource compliance. Unlike their large-company counterparts, they lack the time and resources to build infrastructure and processes that are beyond core business objectives.

But if entrepreneurs and smaller business owners are focused solely on growth and product, how do they know what issues to look for in order to protect the company? Let's look at the Top 5 HR Compliance Issues that they may face.

### 1. Exposure to Workplace Litigation Not Being Addressed

According to the Equal Employment Opportunity Commission (EEOC), race and sexual discrimination are the first and second most prevalent forms of workplace discrimination. But few businesses provide training regarding racial and sexual harassment, which opens the door to wrongful termination when employees leave their jobs.

Yet despite the possibility of being sued, small business owners are not addressing the problem head on. For example, only 23 percent of small businesses provide employment discrimination and/or sexual harassment training (based on a random survey of 300 privately held businesses conducted by Chubb Group of Insurance Companies).

Employee turnover contributes to employer liability by creating potential wrongful termination cases. Studies show that a company's legal costs in a wrongful

the wrong question in an interview – can result in significant consequences.

#### 4. Paperwork Administration Results in Substantial Errors

With every new hire comes a mountain of paperwork. If a company doesn't have access to online services and must deal with hard copies, errors can multiply. Similarly, what happens when an employee enrolls in benefits? Payroll must ensure that the adequate deductions are made. When an employee undergoes a life status change and alters his or her benefits selections, benefits and payroll must be adjusted accordingly and within the legally required timeframe. All of these administrative processes tend to "live" in different parts of the organization, and yet they're utterly dependent upon one another. At each step, when information is transferred from one HR process to another, there is a chance of error. Multiply this possibility by the number of employees and the reams of paperwork, and that possibility starts looking like a probability. When one area fails, the whole process comes to a halt.

Mistakes cause employees to focus on the errors rather than appreciating the benefits that HR delivers them. Many employees don't realize how much money a company spends on employee benefits. The costs are staggering and can easily reach between 5 and 10 percent of an employee's salary, depending on coverage options. So instead of saying how great it is to get top-quality benefits and flexible spending accounts, employees are complaining that the wrong deductions were taken out of their paychecks. This type of negative "water cooler" conversation can spread rapidly.

#### 5. HR Functions Not Being Coordinated

As demonstrated above, in order for the correct amount of deductions for benefits to be taken out of an employee's paycheck, accurate information must flow to and from payroll. Payroll data and benefits recordkeeping need to work in sync. Otherwise, payroll deductions can be wrong. When that happens, employees notice and valuable time is wasted to implement corrections.

If different vendors are employed for the payroll and benefits recordkeeping function, the small business owner is the one who must ensure that everything is coordinated and running smoothly. This entails fielding calls back and forth from the vendors, while trying to understand the technicalities of the different systems. But what about using one of the myriad of payroll software now available? Having the right software still does not address the need to integrate the payroll and benefit functions. So now, in addition to making sure the software runs correctly, owners still need to communicate and transmit the information to their benefits record keeper. On top of that, the payroll software must be continually upgraded. 🏠

### Deferred Action for Childhood Arrivals

President Obama's new Deferred Action for Childhood Arrivals (DACA) program is designed to provide two-year enforcement deferrals to qualifying individuals who were brought without lawful status to the U.S. as minors. The Department of Homeland Security (DHS) began accepting applications Aug. 15 and is on pace to receive 200,000 applications. It is estimated that 1.2 million illegal immigrants are eligible, with more than half in the workforce. DHS has not provided much guidance to employers to reconcile inconsistencies between DACA and compliance with the Immigration and Control Act of 1986. Recently, however, the agency issued guidelines confirming that employers can provide verification of employment for DACA applicants, and that such information will not be shared with enforcement authorities "unless there is evidence of egregious violations of criminal statutes or widespread abuses." Nonetheless, immigration experts don't believe the guidelines offer a complete safe harbor for employers and recommend applicants (and employers) not mention the DACA program when asking for job verification. 🏠

### ARCA Members Donate Roofing to Youth at Risk

Not only do ARCA Members donate money to cherished Phoenix-based charity Youth at Risk, some offer their labor, skill, and materials too. **Ron Brown of Jim Brown and Sons Roofing** generously volunteered time and manpower (he worked on it himself along with **Scott Brown, Bryan Hill, Alfred Betancourt, Tom Knudson, Chester Goldmeer** and **Mark Looney**) to coat the roof of Phoenix Youth at Risk's facility.

Materials for this job were kindly contributed by **Harry Hummel at KM Coatings Mfg., Inc.** and **Kim McCunn at Western Colloid.**

Brown explains, "The roof was an old cap sheet built-up roof system that was in very poor condition. We power-washed the roof and repaired needed areas with caulk and web, then coated the roof with two coats of elastomeric white coating, giving it another 10 years of life. The new roof should also lower their electric bills during the summer months by reducing the heat to the building and reducing the amount of time their air conditioners need to run to cool the offices. Hopefully this will allow them to use their funds to help the kids they do such a good job with." 🏠





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## Piece Work and the Fair Labor Standards Act

*Compensating your workers based on their productivity can be good for you and for them provided you are as diligent in recording hours worked as you are in monitoring tasks completed*

By Kent Lang

In the construction industry, it is common for companies to pay their “non-exempt” (i.e., hourly) workers on a piece rate (i.e., measurable work completed) instead of by the hour. The purpose of this method of compensation, which is perfectly legal if properly executed and documented, is to motivate employees to heighten their productivity beyond what a mere hourly wage would yield.

Piece work is well-suited to industries such as construction, manufacturing, transportation, etc. virtually any type of business where the work content can be predicted. Piece-based compensation is attractive because it can benefit both the worker and the employer: The worker has the opportunity to increase their income in return for extraordinary productivity; meanwhile, the employer can more accurately tie labor costs to output and capacity (e.g., slabs poured, roofs completed, sinks installed, houses built), and tie budgeted labor costs to what is actually paid out.

Unfortunately for many contractors and subcontractors, in the fall of 2011 the U.S. Department of Labor’s Wage & Hour Division decided to investigate major homebuilders, and the companies with which they contract, to root out suspected minimum wage and overtime violations. This summer, Wage & Hour officials announced locally that electrical contractors are among the industry groups that the Labor Department is targeting for investigation of “rampant” violations. The trickle-down effect of the government’s investigation has exposed poor record-keeping and payment practices of many members of the construction industry, resulting in substantial assessments and penalties related to payment for piece work.

Where many construction companies and other payers of piece-based compensation get in trouble is that they neglect to record and observe actual hours worked, which can put them squarely at odds with the Fair Labor Standards Act (FLSA). Piece rates require legitimately keeping “two sets of books”: one set that records hours worked, the other set that records work completed. Reconciling those sets of records with actual compensation paid allows you to demonstrate to workers and government agencies that, while you paid by the task, the amount paid complied with

minimum wage and overtime requirements.

### Consequences

Failure to keep track of worker hours and to pay them according to the rules leaves you open (and largely defenseless) to worker claims that you did not pay them (a) the minimum wage, (b) overtime or (c) both. Those claims will likely spark an audit by an investigator from the Wage & Hour Division, an experience that leaves many employers yearning for the peace and tranquility of an IRS examination.

While your first reaction to learning that one of your workers has reported you to the Department of Labor is to seek vengeance on them, please note the folly of that course of action: If you fire or otherwise willfully discriminate against an employee for filing an FLSA complaint or for participating in a legal proceeding against you, you are subject to criminal prosecution, a first-offense fine of up to \$10,000, and imprisonment for repeat offenses.

That would be in addition to civil penalties of up to \$1,100 per violation for willfully or repeatedly violating the minimum wage or overtime pay requirements, and in addition to liability for back wages.

If that doesn’t seem sufficiently harsh, any undeposited payroll taxes that are associated with the back wages are subject to further penalties and interest, and any employee of your company who could have deposited those payroll taxes can be held *personally liable* for them.

More on that: When you pay an employee whether salary, hourly wage or piece rate and withhold taxes from their paycheck, you become a trustee for the federal government. Withheld payroll taxes are called trust fund taxes and, in the eyes of the IRS, belong to the government. When you fail to pay withheld payroll taxes to the government, IRC Section 6672(a) imposes a penalty equal to the entire amount of the trust fund taxes on every responsible person who willfully fails to see that the taxes are paid. The IRS can assess the penalty against any or all responsible persons, without first trying to collect from the company.

### Paying for Piece Work the Right Way

If, at this point in your reading, you have decided to recommit to doing things right, you are probably more receptive than you were a few minutes ago to a few practical pointers.

On its website, the Wage & Hour Division offers some insight into paying workers on a piece rate, which is defined as the regular rate of pay for an employee paid on a piece work basis ... obtained by dividing the total weekly earnings by the total number of hours worked in that week.

Our Wage & Hour friends use this example: One of your workers, who is paid on a piece work basis, earns \$675 in a particular week. In that week, he worked 45 hours. The regular rate of pay for that week equals \$15 (\$675 divided by 45 hours). In addition to the straight-time pay, the worker is entitled to \$7.50 (half the regular rate) for each hour worked over 40 an additional \$37.50 for the five overtime hours for a total of \$712.50. While the temptation may be great to adjust the number of hours worked to get your worker back down to a gross pay of \$675, don't do it. For employees subject to minimum wage and overtime, hours worked are hours worked.

The Wage & Hour Division offers this alternative method of complying with overtime rules while paying by the piece: If you and your worker agree to this arrangement before the work is performed, you may pay 1.5 times the piece rate for each piece produced during the overtime hours. The piece rate must be the one actually paid during non-overtime hours and must be enough to yield at least the minimum wage per hour.

The recurring theme here is that you must keep track of the workers hours. The FLSA requires that you retain for two years "records on which wage computations are based. This includes time cards, piece work tickets, wage rate tables, work and time schedules, and records of additions to or deductions from wages." However, for purposes of satisfying the Department of Labor, payroll registers should be kept for a minimum of three years.

Remaining vigilant about keeping accurate time records and using approved methods to calculate wages will allow you and your workers to realize the benefits of piece work, while staying out of the cross-hairs of Wage & Hour Division investigators. 🏠

*This article is offered as general guidance only and is not to be relied upon as specific legal advice. For legal advice on a specific matter, please consult with an attorney who is knowledgeable and experienced in that area.*

### **A Special Message from ROC Committee Chair Rhonda LaNue (Lyons Roofing)**

The ROC committee submitted the draft copy of the updated Workmanship Standards to the Chief of Licensing of the ROC for review. After their review we received their draft back to us. We are in the process of consolidating the existing standards, with the ARCA proposed standards and the edited revision from the Chief of Inspection whom reviewed them to present a side by side comparison of the 3.

The goal of the ARCA ROC rewritten standards was

to update the long existing standards with newer generally practiced industry and local standards. We used NRCA, WSRCA, individual manufacturers specifications and recommendations along with local expertise to derive the new draft for review. The ultimate goal being that ARCA as an association would like to provide a consistency of acceptable practices across the board for its members, and attempt to prevent poor workmanship which do not meet industry standards. As an association our focus is to enhance the reputation of ARCA members while protecting the consumer from the likes of unlicensed, or out of state (storm chasers) from harming our industry and consumers.

We will let you know when we receive the next response from the ROC.

Another interesting item from the ROC is the Building Confidence Program (previously known as the Courtesy Inspection Program) has been suspended. We received a call from the Lead Investigator asking if ARCA would perform a confidence inspection for a consumer who had called the ROC. After discussion with Duane, and the Board at the September meeting it was determined that it would be deemed a conflict of interest for ARCA to conduct these. The ROC is currently referring consumers to consultants should they want to proceed with an inspection.

The ROC website still has the Building Confidence Program on the website however this will be an inquiry at the next ROC IAC Board (Industry Advisory Committee) meeting I will be attending on September 21st.

And for those of you not aware, the ROC is no longer on Central and Clarendon. They are now located in the State Capitol Building at 1700 W. Washington St. Suite 105, Phoenix, AZ 85007. The phone numbers remain the same.

We would still love to hear from any ARCA member who has had any adverse issues with the regarding denial of access, rules clarifications, cases going to legal, complaints not closed timely, errors on records, etc. We are here to support you from what may be unwarranted or unreasonable practices, outdated laws or arbitrary claims. Please forward any and all comments to rlanue@lyonsroofing.com. 🏠

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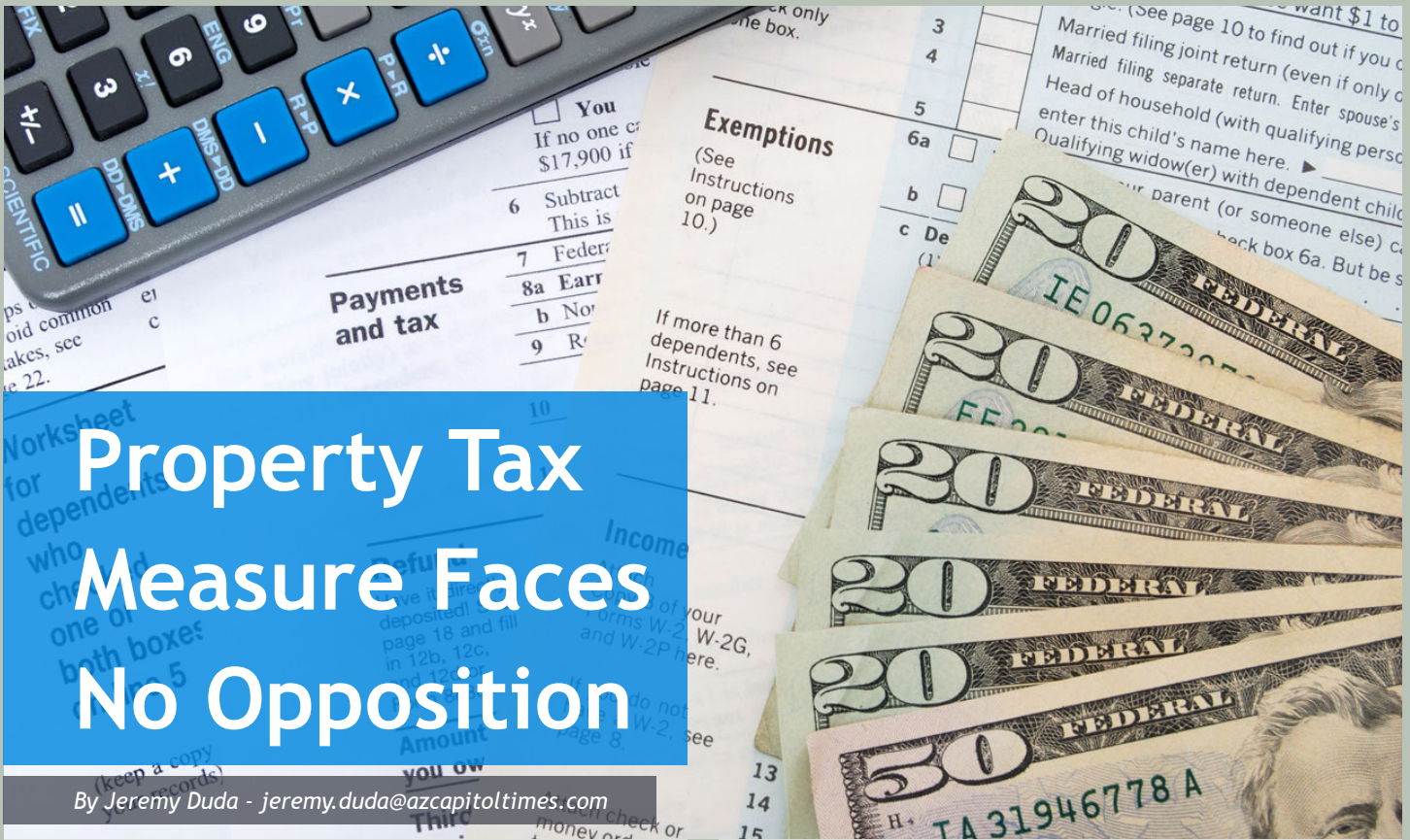
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# Property Tax Measure Faces No Opposition

By Jeremy Duda - [jeremy.duda@azcapitoltimes.com](mailto:jeremy.duda@azcapitoltimes.com)

A years-long quest to drastically lower property taxes on business equipment is finally on the ballot, without even a hint of organized opposition.

Proposition 116 would amend the Arizona Constitution to raise the limit on the amount of business personal property that is exempt from property taxes. The ballot measure would raise the exemption from \$68,000 to the equivalent of the average annual earnings of 50 workers, which comes out to about \$2.4 million.

By lowering the taxes on business equipment, the measure would increase homeowners' property taxes by an average of about \$3 per year, according to the Joint Legislative Budget Committee. Doug Click, the chairman of the Vote Yes on 116 committee, said that minimal impact has helped deter opposition to the measure.

There are a number of classes of taxable property in Arizona, and changes in the assessment ratio on one class shifts a higher burden onto other classes.

SCR1012, which put the proposition on the ballot, sailed through the Legislature without an opposing vote last session. No campaign committees have formed to oppose Prop. 116. And not a single ballot argument was filed against the measure with the Secretary of State's Office.

Normally, toying with Arizona's property tax structure

is a contentious issue. Local governments and school districts worry about the impact to their bottom lines, which are heavily dependent on property tax revenue, and reductions in taxes on business property are often accompanied by increases in the tax burden on homeowners.

But the Arizona chapter of the National Federation of Independent Business found a way to alleviate the fiscal burden, and with it, the opposition. It made the change prospective, meaning it only affects new property starting in fiscal year 2013, not property that is already on the tax rolls. As a result, NFIB Arizona Director Farrell Quinlan said the ballot measure eliminated much of the fiscal impact on local governments, schools and homeowners that would normally arouse opposition.

"The bottom line is this does not reduce by one dime any local government or school district's budgets, and it has an almost negligible impact on property tax payers," Quinlan said. "As long as the proposal does not significantly impact those constituencies, I think that's why you're seeing no opposition to it."

Quinlan and other supporters insist it won't affect school districts, which rely on property tax revenue and usually vocal opponents of tax changes that cost them funding. No education groups so far have spoken in opposition.

JLBC reported that Prop. 116 would cost the state's

general fund about \$8.2 million, beginning in fiscal year 2015. The \$8.2 million would be used to offset the loss of local tax funding to K-12 schools.

The only organization that registered any opposition to SCR1012 during the legislative session was the Arizona Association of Counties. Jen Sweeney, a lobbyist for the association, said several county assessors had expressed concerns to her that the measure would drain revenue from the counties.

But the association determined that the impact would be “negligible,” and Sweeney said it decided to forgo any further opposition.

“It’s a fight we knew we weren’t going to win,” Sweeney said. “All I heard back from some of the counties in particular is it wasn’t going to make that big of a difference, and there were bigger fish to fry this legislative session.”

Yuma County Assessor Joe Wehrle said his county has about \$40 million in business personal property on its tax rolls. If the exemption proposed in Prop. 116 were already in effect, it would cost Yuma County about \$755,000 of the \$22 million it expects to collect in property taxes for the current fiscal year.

Wehrle said the future impact is difficult to determine.

“We don’t know what the impact would actually be because it’s stuff that hasn’t happened yet. It’s transactions that haven’t even occurred,” he said.

Pima County Assessor Bill Staples said he’s not worried about the fiscal impact Prop. 116 will have on his county either.

“I don’t think this is going to have a huge impact along those lines,” Staples said.

Maricopa County Assessor Keith Russell said his office is still analyzing the measure, but noted that the office registered its position as neutral during the legislative process. According to JLBC, the measure would eliminate about 85 percent of Maricopa County’s business personal property from its tax rolls, if it were already in effect.

Staples and Wehrle both said they’re personally opposed to Prop. 116, but they oppose it for reasons unrelated to the fiscal impact. Wehrle said he believes the change is unfair because it leaves the tax in place for property that’s already on the tax rolls, while Staples said he’s concerned about the impact on homeowners’ property taxes.

Neither plans to formally oppose the measure in any way.

The proposal has strong support on both sides of the

aisle. It cruised to victory on a 51-0 vote in the House and a 30-0 vote in the Senate.

Two House Democrats voted against SCR1012 in committee, but both voted for it on the House floor.

Two prominent Democrats, House Minority Leader Chad Campbell and former Board of Regents member Fred DuVal, submitted ballot arguments in favor of the measure. Campbell, who sponsored a proposal in 2011 to exempt many types of business property from the tax, said the impact on school funding would be minimal.

“I think it will be more than offset by the amount of capital it both brings into the state and frees up. This is one of those tax cuts that I believe is going to create jobs and is actually going to create more revenue in the long run,” said Campbell, D-Phoenix.

Click agreed. Many states do not tax business personal property, he said, and some businesses, including the high tech, research-oriented businesses Arizona is trying to attract, are discouraged by the tax, he said.

“It’s not uncommon for them to have a small machine that costs \$3 million. And they’re going to have to pay on this forever? They’ll go somewhere else as opposed to coming here,” he said.

The campaign has reported raising about \$25,000 so far, and Click, who owns the heavy equipment company Arizona Hi-Lift, said he hopes to raise a bit more. The committee has already bought airtime on cable television and small amount of network airtime as well, and plans to put up yes-on-116 signs as well.

Even without opposition, Click said the campaign must educate voters.

“When people look at this measure they kind of put their nose up to it. But once you educate them about it a little bit ... they’re 100 percent for it. I very rarely hear anybody who disagrees once I explain the tax to them,” he said.

Arizona Tax Research Association President Kevin McCarthy said he expects a tight race. McCarthy’s group spearheaded the fight for the 1996 exemption that was approved by voters, but is neutral on Prop. 116.

“We had a close vote in ’96 ... and it had little or no opposition,” McCarthy said. “It was a surprise to us. We thought we’d have a fairly easy way with it. It was a lot closer than we anticipated.” 🏠



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## Personal Liability for Failure to Pay Subs, Suppliers

*Payments received on a residential project are to be held in trust for the benefit of the parties that provided materials and services*

By Mike Thal

The owners, officers and directors of a construction company can be personally liable when their company, after receiving payment on a residential project, fails to pay subcontractors or suppliers as required by Arizona law. As construction activity and its inevitable disputes continue to rebound, that conclusion by the Arizona Court of Appeals, in its 2010 ruling in *Arizona Tile LLC v. Berger*, is worth reviewing.

### Background

Designer Surfaces, Inc., was a supplier of residential countertops. Much of its business came via large retailers, such as Costco and Lowes. The retailers contracted with customers and then subcontracted the work to Designer Surfaces, which purchased materials on an open account from, among other suppliers, Arizona Tile.

Designer Surfaces became insolvent and stopped paying Arizona Tile, even though the retailers had paid Designer Surfaces for the jobs that Arizona Tile had supplied. Arizona Tile filed a lawsuit and obtained a default judgment against Designer Surfaces.

Arizona Tile also sued Designer Surfaces directors personally, claiming a breach of fiduciary duty based on A.R.S. § 33-1005. Arizona Tile argued that the directors had diverted to other uses the \$26,800 that Designer Surfaces had collected from the retailers and that should have been held in trust for payment to Arizona Tile.

A.R.S. § 33-1005 states in part:

Monies paid by or for an owner-occupant ... to a contractor ... as payment for labor, professional services, materials, machinery, fixtures or tools for which a lien is not provided ... shall be deemed ... to be paid in trust and shall be held by the contractor for the benefit of the person or persons furnishing such labor, professional services, materials, machinery, fixtures or tools. Such monies shall neither be diverted nor used for any purpose other than to satisfy the claims of those for whom the trust is created ... [.] (Emphasis added.)

It is important to note that this statute does not apply to commercial or other non-residential construction. It applies specifically to residential projects, where lien rights exist only for contractors who have a direct contract with the owner-occupant.

The Superior Court judge ruled that A.R.S. § 33-1005

applied to the facts in this case and issued a summary judgment against Designer Surfaces and its directors personally. The directors appealed the trial courts ruling.

### Personal Liability

In upholding the trial courts summary judgment, the Arizona Court of Appeals ruled that ... a corporations breach of its trust obligation ... can result in the personal liability of a corporate officer or director.

The Court cited the Ninth Circuit Bankruptcy Appellate Panel (BAP) 1990 *In re Baird* ruling. In that case, the BAP refused to allow the sole owner of a construction company to discharge, in his personal bankruptcy, a debt created when his company failed to pay a subcontractor on a residential project, despite being paid for that subcontractors work. The BAP held that the general contractor breached the trust obligation created by the aforementioned A.R.S. § 33-1005 and thus, was personally liable for the debt.

### Why Arizona Tile Matters

The Court of Appeals ruling in *Arizona Tile* provides a point-by-point warning for any contractor whose company, after receiving payment on a residential project, does not pay a subcontractor or supplier as required by law:

- Designer Surfaces was obliged ... to treat as funds held in trust the monies received on behalf of suppliers like Arizona Tile.
- The corporation breached its trust obligations by failing to hold those funds for the benefit of its suppliers, by failing to pay those funds over to the suppliers when due, and by using those funds for any purpose other than to satisfy the claims of those for whom the trust [was] created.
- [The directors] authorized these wrongful actions and ... can be personally liable for the damage caused by the corporations breach of trust.

The bottom line for contractors: When you receive payment on a residential job, the portion of that payment that is owed to suppliers or subcontractors is not your money to be used as you wish. It is money held in trust for the benefit of other parties, and your failure to pay over the amounts due can make you personally liable for payment.

For subcontractors, if an upper-tier contractor diverts money owed to you on a residential project, that companys officers or directors cannot rely on the personal liability protection that a corporation or LLC normally provides.

This article is offered as general guidance only and is not to be relied upon as specific legal advice. For legal advice on a specific matter, please consult with an attorney who is knowledgeable and experienced in that area. 🏠



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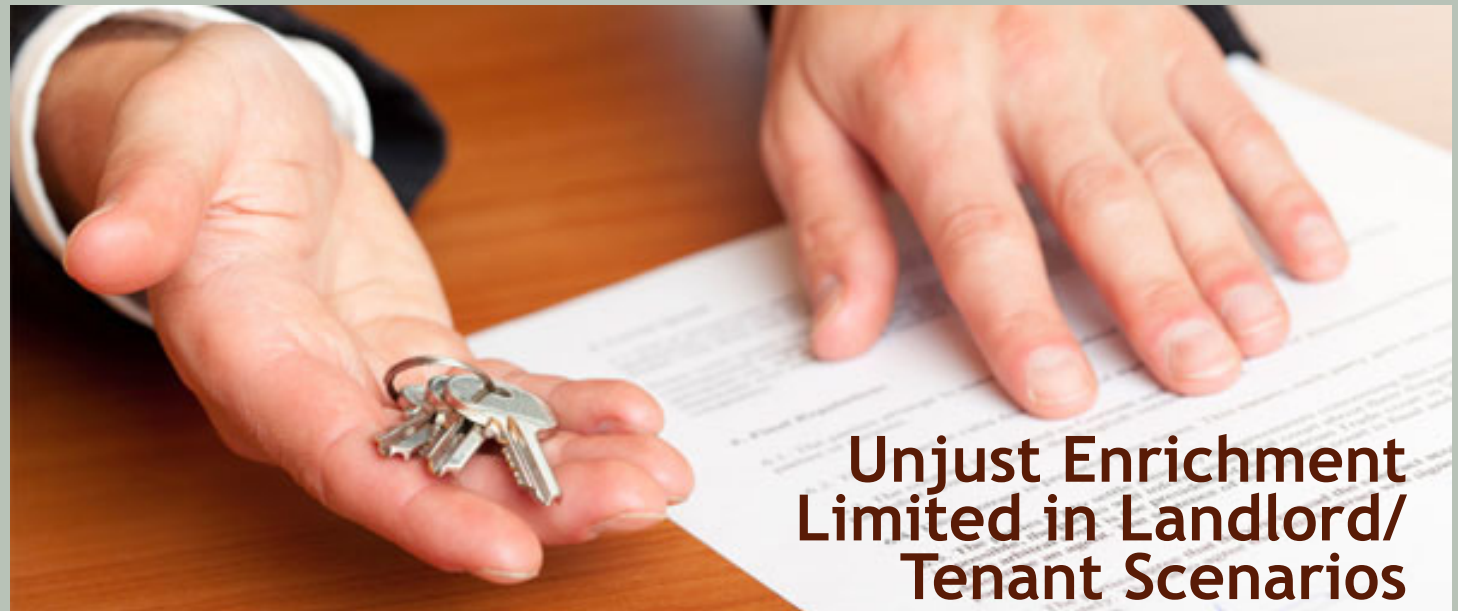


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## Unjust Enrichment Limited in Landlord/Tenant Scenarios

*By Tim Ducar*

Suppose you act as a subcontractor on a job. Assume in the middle of that project, the general contractor goes out of business, leaving you with unpaid invoices. You want to look for compensation for your labor and materials, and often, the only other entity to look to is the project owner. Normally, as a subcontractor, you do not have a contract with the project owner, so you cannot initiate a legal action and allege breach of contract. Traditionally, in these scenarios, unjust enrichment has been a broad remedy the subcontractor could use to collect money from an owner.

Unjust enrichment provides a remedy when one party has benefitted from another and, in good conscience, the benefitted party should compensate the other. It does not apply to cases in which owners have paid general contractors for the subcontractor's work. It does apply when the owner has not paid the subcontractors. In that case, a court would order the owner to pay the subcontractor. These two broad principles are unchanged.

In August, the Arizona Court of Appeals handed down a court opinion called *Wang Electric v. Smoke Tree Resort* that limits the remedy of unjust enrichment when a lease is involved. In

that case, the court ruled that subcontractors who contracted with a tenant to improve a building, and who do not get paid by the tenant, cannot sue the owner of the building for unjust enrichment unless the subcontractor shows the owner acted with improper, deceitful or misleading conduct. According to the court, the reason for this is that the owner/landlord should not have to act as an insurer for the tenant's acts and as a guarantor for the tenant's payments to subcontractors.

In the end, the court ruled the owner could benefit from the improvements and not pay for them because the owner's retaining the improvements without paying the contractor was not unjust. The court ruled that the owner's actively taking a role in the construction of the project did not make the owner's retaining the benefits of the improvements, without paying for them, unjust. So, in this case, the owner received an almost-finished commercial restaurant without having to pay for much of it.

Many have pointed out that the delineation that the court made is nonsensical and that the result is far from just. Nevertheless, subcontractors should beware when contracting with tenants of buildings. If the tenant files for bankruptcy or simply goes out of business, you may not have an unjust enrichment claim against the owner.



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For more information about your member benefit program, contact:

Russell Kipnis, Staples Advantage Account Manager  
714-868-4162  
Russell.Kipnis@staples.com

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