



UNDER CONSTRUCTION

September 2011

The Owner Occupant Exception – When is a Trust a Natural Person?

By Benjamin M. Mitsuda

A critical question for residential contractors in Arizona is whether a homeowner is an "owner occupant." When a homeowner is an "owner occupant," contractors may only record a lien on the property if they have a direct contract with the owner. In addition, after recent modifications, the Prompt Pay Act may only apply to owner occupants if specific requirements are followed by the contractor. Therefore, it is very important that residential contractors always determine whether or not the owner is an "owner occupant" before signing a residential construction contract.

The Arizona Court of Appeal's recent decision in *Williamson v. PVOrbit, Inc.*, 2011 Ariz. App. LEXIS 155 (September 1, 2011), for the first time determined that a residential property owned by a trust was still "owner occupied" for purposes of A.R.S. § 33-1002. A.R.S. § 33-1002(a) defines an "owner occupant" as any "natural person" who holds "legal or equitable title to the dwelling" and resides or intends to reside in the dwelling for at least 30 days in the year following the completion of the construction.

In *Williamson*, the homeowner entered into a contract with a general contractor to build an addition on their home. The general contractor entered into a subcontract with the defendant, PVOrbit, Inc. for doors, hardware and related trim work. After the general contractor went bankrupt, PVOrbit recorded a lien on the property for the

remaining balance owed to it for work performed. The homeowners sued PVOrbit for wrongful lien under A.R.S. § 33-420 arguing that because they were "owner occupants" PVOrbit did not have lien rights. PVOrbit argued that the homeowners were not "owner occupants" because the home was owned by a trust and not by the homeowners themselves. The Superior Court ruled against the subcontractor holding that the home was owned by an "owner occupant" even though it was owned by a trust. Accordingly, the Superior Court assessed a \$6,000 penalty against the subcontractor for filing the wrongful lien.

On appeal, the Court of Appeals affirmed the Superior Court's finding that a home is still "owner occupied" when it is owned by a trust, even though a trust is not a "natural person," because under Arizona trust law, a trustee (and not the trust) holds legal title to property in a trust. In this case, the Williamsons held title to the property as trustees. As a result, the court found that the property's title was held by a natural person and that the homeowners were "entitled to the benefits and protections provided in A.R.S. § 33-1002.A.2." *Id.* at *9.

Based upon the ruling in *Williamson*, contractors should treat residential properties owned by a trust as "owner occupied" and protect themselves accordingly.

Past Issues
Snell & Wilmer
Construction Practice

©2011 All rights reserved. The purpose of this newsletter is to provide our readers with information on current topics of general interest and nothing herein shall be construed to create, offer or memorialize the existence of an attorney-client relationship. The articles should not be considered legal advice or opinion, because their content may not apply to the specific facts of a particular matter. Please contact a Snell & Wilmer attorney with any questions.