

## Mark E. Barker

602.234.7828

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### *Areas of Practice*

Business Law

Banking Finance

Business Corporate Counseling

Insurance Defense & Coverage

Real Estate

Construction Law

Surety & Fidelity Law

Litigation



Mr. Barker has established a construction and commercial litigation practice with an emphasis on Surety & Fidelity Law, construction law and business dispute resolution. Mr. Barker also has a busy commercial transaction practice representing financial institutions and Arizona small businesses.

Mr. Barker assists surety clients with a variety of issues including investigation and resolution of performance and payment bond claims, takeover and completion of public, tribal and private projects, principal financing and collateral arrangements, quia timet and indemnity actions, salvage and subrogation claims.

Mr. Barker also represents Arizona small businesses and financial institutions. Mr. Barker can provide assistance with the formation of business entities, preparation of operating agreements or shareholder agreements, asset purchase and sale transactions, business reorganizations through merger or share exchange, real property acquisition and sale and other financial transactions. Representation of financial institutions has included the preparation of loan documents and related agreements for real estate acquisition, development and construction financing. Mr. Barker's work for financial institutions has expanded from primarily assisting with new loan transactions to representation arising out of the strained relationships between lenders and borrowers that have resulted from Arizona's economic woes over the last couple of years. Representation of financial institutions includes forbearance arrangements, loan modification, restructure or settlement agreements, note sales, sale transactions involving lender-owned real estate and the enforcement of lending transactions including non judicial and judicial foreclosure proceedings.

Mr. Barker joined the firm in 1984 and became a partner in 1992.

Mr. Barker is a graduate of the University of Arizona (B.S. 1981 and J.D. 1984).

## *Bar Admissions*

Arizona

U.S. District Court District of Arizona

## *Education*

University of Arizona College of Law

J.D., 1984

University of Arizona

B.S., 1981

## *Representative Engagements*

Surety company's multi-project bond loss including: takeover and completion of two housing projects owned by Indian Tribes; resolution of a performance bond claim by a

general contractor on another Tribal owned project involving allegations of defective work, latent defects, obligee overpayment and maladministration; enforcement through litigation of the indemnitor's indemnity obligations.

Obtain *quia timet* relief for surety companies to force collateral acquisition and repayment of bond losses.

Successful resolution of a general contractor's wrongful termination claim against public owner through settlement that, among other things, converted a termination for default to a termination for convenience.

Negotiated and documented a member withdrawal and buyout agreement to resolve a contentious dispute between members of a limited liability company.

Reorganization of a residential contracting business through the creation of a holding company to acquire through share exchange two existing affiliated companies as wholly owned subsidiaries.

Preparation of loan documents for financial institution in connection with a loan of funds to a borrower for the purpose of acquiring, developing and constructing medical office condominiums.

Preparation of loan documents for financial institution in connection with a loan of funds to a borrower for the construction of hotel properties in Arizona, Utah and New Mexico.

Comprehensive loan restructure and modification transaction resolving loan defaults under six loans to affiliated borrowers.

Several successful lender workout transactions resolving loan defaults by long-standing Arizona small businesses.

## *Published Works*

Co-author, *Arizona Construction Law Practice Manual, Construction Surety Claims*, **State Bar of Arizona**

*Arizona Construction Law, Continuing Legal Education*, **State Bar of Arizona** (1994)

## *Honors and Awards*

Selected to the **Southwest Super Lawyers** list – 2019

Listed in the Top 100 Lawyers in Arizona by **Arizona Business Magazine** (2019)

Selected for inclusion in the **Southwest Super Lawyers®** lists Construction/Surety, Business/Corporate (2009-2018)

Arizona's Finest Lawyers© (2011)

Listed in The Best Lawyers in America®, Construction Law and Construction Litigation, (2009-2019)

## *Professional Associations and Memberships*

State Bar of Arizona, Executive Council Member 1993-1995, Construction Law Section Member, Chair, 1996 and 1997

Maricopa County Bar Association, Member, Construction Law Committee, Member

American Bar Association, Member, Surety & Fidelity Law Section, Member; Construction Law Forum, Member

## *Pro Bono Activities*

Maricopa County Bar Association - Volunteer Lawyers Program

## *Classes/Seminars*

Annual Construction Law Seminar, **State Bar of Arizona** (Several Years) *Dealing With The*

*Surety On Trouble Construction Jobs*, **Lorman Seminars** *Impact of A-201 Modifications On*

*The Surety*, **Surety Claims Institute**

*Arizona Construction Law for Architects, Engineers and Contractors*, **HalfMoon Seminars** (April 2008)

*Why Won't Sureties Do What You Want Them To Do?*, Construction Section monthly seminar, **State Bar of Arizona** (2001)

*Mechanics Lien and Business Organization Strategies*, Seminar for the **Electric League of Arizona** (1993)

*Mechanics Liens*, Seminar to **Association of Builders and Contractors** (1992)



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