



JENNINGS HAUG
KELEHER MCLEOD
WATERFALL LLP



602.234.7828

meb@jkwlawyers.com

2800 North Central Ave.
Suite 1800
Phoenix, AZ 85004

Services

- Business Law
- Banking & Finance Litigation
- Corporate Law
- Insurance Defense & Coverage
- Commercial Real Estate
- Construction Law
- Fidelity & Surety Law

Mark E. Barker

Mark Barker has established a construction and commercial litigation practice with an emphasis on surety and fidelity law, construction law and business dispute resolution. He also has a busy commercial transaction practice representing financial institutions and Arizona small businesses.

Mark 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.

Mark's representation of financial institutions includes the preparation of loan documents and related agreements for real estate acquisition, development, and construction financing. His work for financial institutions expanded from primarily assisting with new loan transactions to representation, arising out of the strained relationships between lenders and borrowers resulting from Arizona's economic woes.

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.

Mark also represents Arizona small businesses and financial institutions. He provides clients 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.

Mark joined the firm in 1984 and became a partner in 1992.

Mark is a graduate of the University of Arizona.

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.

Representative Engagements (cont.)

- 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.

Bar Admissions

- Arizona
- U.S. District Court for the District of Arizona

Education

University of Arizona College of Law, J.D. (1984)

University of Arizona, B.S. (1981)

Honors & Awards

- Selected for inclusion in the Best Lawyers in America® in the areas of:
 - Business Organizations (2024)
 - Construction Law (2009-2024)
 - Construction Litigation (2011-2024)
 - Real Estate Litigation (2018-2024)
- Named in the Top 100 Lawyers in Arizona by *Arizona Business Magazine* (2019)
- Selected for inclusion in the Southwest Super Lawyers® list in the areas of:
 - Construction/Surety (2009-2019)
 - Business/Corporate (2009-2019)
- Listed by *Arizona's Finest Lawyers*® (2011)

Classes & Seminars

- State Bar of Arizona Annual Construction Law Seminar (Several Years)

Classes & Seminars (cont.)

- *“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** (Spring 2008)
- *“Why Won't Sureties Do What You Want Them To Do?”* **State Bar of Arizona**, Monthly seminar for the Construction Section (2001)
- *“Mechanics Lien and Business Organization Strategies,”* Seminar for the **Electric League of Arizona** (1993)
- *“Mechanics Liens,”* Seminar for the **Association of Builders and Contractors** (1992)

Published Works

- Co-Author, *“Arizona Construction Law Practice Manual,”* Construction Surety Claim, **State Bar of Arizona**
- Author, *“Arizona Construction Law,”* Continuing Legal Education, **State Bar of Arizona** (1994)

Professional Associations & Memberships

- **State Bar of Arizona**, Member
 - Executive Council (1993-1995)
 - Construction Law Section, Member; Chair (1996-1997)
- **Maricopa County Bar Association**, Member
 - Construction Law Committee, Member
- **American Bar Association**, Member
 - Fidelity & Surety Law Section, Member
 - Construction Law Forum, Member

Pro Bono Activities

- Volunteer Lawyers Program for the **Maricopa County Bar Association**