

SENATE BILL NO. 448—COMMITTEE ON JUDICIARY

MARCH 29, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing mechanics' and materialmen's liens. (BDR 9-1144)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to liens; making various changes to the provisions related to mechanics' and materialmen's liens; revising the amount of a lien that a lien claimant has upon the property and any improvements under certain circumstances; revising the requirements for a notice of lien; requiring certain lessees to establish a construction disbursement account; providing that a notice of nonresponsibility is invalid under certain circumstances; providing that a lien claimant may not bring an action or join an action that has been commenced against a principal and surety under certain circumstances; providing that a notice of lien must be given to the prime contractor of a work of improvement; revising the requirements for a waiver and release of the rights of a lien claimant; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 108.222 is hereby amended to read as follows:
2 108.222 1. Except as otherwise provided in subsection 2, a
3 lien claimant has a lien upon the property and any improvements for
4 which the work, materials and equipment were furnished for:
5 (a) If the parties agreed upon a specific price or method for
6 determining a specific price for some or all of the work, material



1 and equipment furnished by or through the lien claimant, the unpaid
2 balance of the price agreed upon for such work, material or
3 equipment, as the case may be, whether performed or furnished at
4 the instance of the owner or his agent; and

5 (b) If the parties did not agree upon a specific price or method
6 for determining a specific price for some or all of the work, material
7 and equipment furnished by or through the lien claimant, ~~for an~~
8 ~~amount equal to the fair market value of such work, material or~~
9 ~~equipment, as the case may be, including a]~~ *whether performed or*
10 *furnished at the instance of the owner or his agent:*

11 (1) *An amount for labor calculated by multiplying the*
12 *actual number of labor hours worked on the current work of*
13 *improvement by the rates of wages for each class of mechanics*
14 *and workmen paid by the lien claimant on the work of*
15 *improvement that the lien claimant worked on immediately before*
16 *the current work of improvement;*

17 (2) *An amount for the lien claimant's standard equipment*
18 *and material costs;*

19 (3) *A reasonable allowance for overhead and a profit* ~~for~~
20 ~~whether performed or furnished at the instance of the owner or at~~
21 ~~the instance of his agent.] ; and~~

22 (4) *Any amount related to a disputed item or claim that the*
23 *lien claimant believes in good faith he is entitled to receive from*
24 *the other party, so long as the other party has prior knowledge of*
25 *the nature and extent of the disputed item or claim.*

26 2. If a contractor or professional is required to be licensed
27 pursuant to the provisions of NRS to perform his work, the
28 contractor or professional will only have a lien pursuant to
29 subsection 1 if he is licensed to perform the work.

30 **Sec. 2.** NRS 108.226 is hereby amended to read as follows:

31 108.226 1. To perfect his lien, a lien claimant must record his
32 notice of lien in the office of the county recorder of the county
33 where the property or some part thereof is located in the form
34 provided in subsection 5:

35 (a) Within 90 days after the date on which the latest of the
36 following occurs:

37 (1) The completion of the work of improvement;

38 (2) The last delivery of material or furnishing of equipment
39 by the lien claimant for the work of improvement; or

40 (3) The last performance of work by the lien claimant for the
41 work of improvement; or

42 (b) Within 40 days after the recording of a valid notice of
43 completion, if the notice of completion is recorded and served in the
44 manner required pursuant to NRS 108.228.

45 2. The notice of lien must contain:



(a) A statement of the lienable amount after deducting all just credits and offsets.

(b) The name of the owner if known.

(c) The name of the person by whom he was employed or to whom he furnished the material ~~or~~ *or equipment.*

(d) A brief statement of the terms of payment of his contract.

(e) A description of the property to be charged with the notice of lien sufficient for identification.

3. The notice of lien must be verified by the oath of the lien claimant or some other person. The notice of lien ~~need not~~ *must* be acknowledged to be recorded.

4. It is unlawful for a person knowingly to make a false statement in or relating to the recording of a notice of lien pursuant to the provisions of this section. A person who violates this subsection is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$5,000 nor more than \$10,000.

5. A notice of lien must be substantially in the following form:

Assessor's Parcel Numbers

NOTICE OF LIEN

The undersigned claims a lien upon the property described in this notice for work, materials or equipment furnished for the improvement of the property:

1. The amount of the original contract is: \$.....

2. The total amount of all changes and additions, if any, is: \$

3. The total amount of all payments received to date is: \$

4. The amount of the lien, after deducting all just credits and offsets, is: \$.....

5. The name of the owner, if known, of the property is:

6. The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is:

7. A brief statement of the terms of payment of the lien claimant's contract is:

.....

8. A description of the property to be charged with the lien is:

.....
(Print Name of Lien Claimant)

By
(Authorized Signature)



1 State of Nevada)
2) ss.
3 County of)
4

5 (print name), being first duly sworn on oath
6 according to law, deposes and says:
7

8 I have read the foregoing Notice of Lien, know the contents
9 thereof and state that the same is true of my own personal
10 knowledge, except those matters stated upon information and belief,
11 and, as to those matters, I believe them to be true.
12

13
14 (Authorized Signature of Lien Claimant)
15

16 Subscribed and sworn to before me
17 this day of the month of of the year
18

19
20 Notary Public in and for
21 the County and State
22

23 6. ~~If a work of improvement involves the construction,~~
24 ~~alteration or repair of multifamily or single family residences, a~~ A
25 lien claimant, except laborers, must serve a 15-day notice of intent
26 to lien incorporating substantially the same information required in a
27 notice of lien upon both the owner and the prime contractor before
28 recording a notice of lien ~~[]~~ *on any work of improvement*. Service
29 of the notice of intent to lien must be by personal delivery or
30 certified mail . ~~[and will extend the time for recording the notice of~~
31 ~~lien described in subsection 1 by 15 days.]~~ A notice of lien for
32 materials or equipment furnished or for work or services performed,
33 except labor, for a work of improvement ~~[involving the~~
34 ~~construction, alteration or repair of multifamily or single family~~
35 ~~residences]~~ may not be *recorded*, perfected or enforced pursuant to
36 NRS 108.221 to 108.246, inclusive, unless the 15-day notice of
37 intent to lien has been given.

38 **Sec. 3.** NRS 108.231 is hereby amended to read as follows:

39 108.231 1. In every case in which a notice of lien is recorded
40 against two or more separate buildings or mining claims that are
41 owned by the same person and that are located on separate legal
42 parcels that existed at the commencement of construction, the lien
43 claimant must, at the time of recording the notice of lien, designate
44 the lienable amount due to him on each building or mining claim.



2. The lien of a lien claimant only applies to the ~~lienable amount designated in the notice of lien, plus all amounts~~ *amount* that may be awarded by the court pursuant to NRS 108.237, as against other creditors having liens by judgment or otherwise, upon the buildings or mining claims. However, the ~~lienable~~ amount chargeable to the interest of the owner in each building must be the total *lienable* amount of the lien claimant's notice of lien, without regard to the proportionate amount designated to each separate building in the lien claimant's notice of lien. ~~[, plus all amounts that may be awarded by the court pursuant to NRS 108.237, but upon the trial thereof, the]~~ *The* court may ~~[, where it deems it equitable to do so,]~~ distribute the lien equitably as among the several buildings involved.

3. If a lien claimant fails to designate in his notice of lien the amount due to him on each separate building as provided in subsection 1, the lien claimant's notice of lien must be postponed to the notices of lien of other lien claimants and other encumbrancers for value who have designated the amount due on each building or mining claim but must not be inferior to any rights or interests of the owner. For purposes of this subsection, a lien claimant's lien must not be postponed to other liens or encumbrances if the lien claimant's designation among the parcels was estimated by the lien claimant in good faith or was based upon a pro rata division of the total lienable amount.

Sec. 4. NRS 108.234 is hereby amended to read as follows:

108.234 1. Except as otherwise provided in subsection 2, every improvement constructed, altered or repaired upon property shall be deemed to have been constructed, altered or repaired at the instance of each owner having or claiming any interest therein, and the interest owned or claimed must be subject to each notice of lien recorded in accordance with the provisions of NRS 108.221 to 108.246, inclusive.

2. ~~[The]~~ *Except as otherwise provided in subsection 5, the* interest of a disinterested owner in any improvement and the property upon which an improvement is constructed, altered or repaired is not subject to a notice of lien if the disinterested owner, within 3 days after he first obtains knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, gives notice that he will not be responsible for the improvement by recording a notice in writing to that effect with the county recorder of the county where the property is located and, in the instance of a disinterested owner who is:

(a) A lessor, the notice of nonresponsibility shall be deemed timely recorded if the notice is recorded within 3 days immediately



1 following the effective date of the lease or by the time of the
2 execution of the lease by all parties, whichever occurs first; or

3 (b) An optionor, the notice of nonresponsibility shall be deemed
4 timely recorded if the notice is recorded within 3 days immediately
5 following the date on which the option is exercised in writing.

6 3. Each notice of nonresponsibility recorded pursuant to this
7 section must ~~identify:~~

8 ~~—(a) The~~ :

9 (a) *Identify the* name and address of the disinterested owner ~~;~~

10 ~~—(b) The~~ *and the lessee who is or will be causing the*
11 *improvement to be constructed, altered or repaired;*

12 (b) *Identify the* location of the improvement and the property
13 upon which the improvement is or will be constructed, altered or
14 repaired;

15 (c) ~~The~~ *Identify the* nature and extent of the disinterested
16 owner's interest in the improvement and the property upon which
17 the improvement is or will be constructed, altered or repaired; ~~and~~

18 ~~—(d) The~~

19 (d) *Identify the* date on which the disinterested owner first
20 learned of the construction, alteration or repair of the improvement
21 that is the subject of the notice of nonresponsibility ~~;~~

22 ~~—4. Any lessee who~~ ; and

23 (e) *Indicate whether, to the knowledge of the disinterested*
24 *owner, the lessee has established a construction disbursement*
25 *account or recorded a surety bond pursuant to subsection 4.*

26 4. Before any lessee causes a work of improvement to be
27 constructed, altered or repaired upon property that *he* is ~~leased shall~~
28 ~~provide~~ leasing, *he must:*

29 (a) *Establish a construction disbursement account and fund*
30 *the account in an amount equal to the total amount of the*
31 *construction contract; or*

32 (b) *Provide* a payment ~~and completion~~ bond from a surety
33 licensed to do business in this State in an amount equal to ~~no less~~
34 ~~than 1.5 times~~ the total amount of the construction contract. The
35 surety bond must be recorded in accordance with NRS 108.2415 to
36 108.2425, inclusive, before commencement of the construction,
37 alteration or repair of the work of improvement and must be payable
38 upon default by the lessee of any undisputed amount pursuant to the
39 construction contract that is due and payable to the prime contractor
40 for more than 30 days.

41 5. If a lessee fails to *establish and fund a construction*
42 *disbursement account or* record a surety bond as required pursuant
43 to ~~this section, the~~ *subsection 4:*



1 (a) *The* prime contractor may invalidate the construction
2 contract and may recover damages including, without limitation,
3 consequential damages, reasonable attorney's fees and costs ~~[-~~
4 ~~—5.1~~ ; and

5 (b) *The notice of nonresponsibility recorded by a disinterested*
6 *owner does not protect the interest of the disinterested owner in*
7 *any improvement or the property upon which an improvement is*
8 *constructed, altered or repaired, from a notice of lien.*

9 6. As used in this section, "disinterested owner" means an
10 owner who did not personally or through his agent or representative,
11 directly or indirectly, ~~[request, require, authorize, consent to]~~ *design*
12 *in whole or in part, finance in whole or in part, contract for* or
13 cause a work of improvement, or any portion thereof, to be
14 constructed, altered or repaired upon the property of the owner ~~[-]~~ *or*
15 *who did not reserve the right to retain all or any portion of the*
16 *work of improvement after the lessee vacates the property.* The
17 term must not be interpreted to invalidate a notice of
18 nonresponsibility recorded pursuant to this section or to deny the
19 rights granted pursuant to this section upon the recording of a notice
20 of nonresponsibility because:

21 (a) The disinterested owner is a lessor or an optionor under a
22 lease that requests, requires, authorizes or consents to his lessee
23 causing the work of improvement to be constructed, altered or
24 repaired upon the property;

25 (b) The lessee personally or through his agent or representative
26 enters into a contract and causes the work of improvement to be
27 constructed, altered or repaired upon the property; and

28 (c) The lessor or optionor notifies the lessee in writing that
29 pursuant to subsection 4, the lessee must *establish and fund a*
30 *disbursement account for the amount of the construction contract*
31 *or* record a surety bond before causing a work of improvement to be
32 constructed, altered or repaired upon the property.

33 **Sec. 5.** NRS 108.239 is hereby amended to read as follows:

34 108.239 1. A notice of lien may be enforced by an action in
35 any court of competent jurisdiction, on setting out in the complaint
36 the particulars of the demand, with a description of the property to
37 be charged with the lien.

38 2. At the time of filing the complaint and issuing the summons,
39 the lien claimant shall:

40 (a) File a notice of pendency of the action in the manner
41 provided in NRS 14.010; and

42 (b) Cause a notice of foreclosure to be published at least once a
43 week for 3 successive weeks, in one newspaper published in the
44 county, and if there is no newspaper published in the county, then in
45 such mode as the court may determine, notifying all persons holding



1 or claiming a notice of lien pursuant to the provisions of NRS
2 108.221 to 108.246, inclusive, on the property to file with the clerk
3 and serve on the lien claimant and also on the defendant, if the
4 defendant is within the State or is represented by counsel, written
5 statements of the facts constituting their liens, together with the
6 dates and amounts thereof.

7 3. All persons holding or claiming a notice of lien may join a
8 lien claimant's action by filing a statement of facts within 10 days
9 after the last publication of the notice of foreclosure ~~[]~~ *or within 10*
10 *days after receiving a copy of the notice of foreclosure pursuant to*
11 *subsection 4, whichever is later.* Any number of persons claiming
12 liens may join in the same action if they timely file a statement of
13 facts in the lien claimant's action. ~~[The]~~ *If the* lien claimant ~~[and~~
14 ~~other parties]~~ *or other party* adversely interested ~~[must be allowed~~
15 ~~20 days to answer the]~~ *does not answer the statements, the lien*
16 *claimant or other party adversely interested shall be deemed to*
17 *have denied the allegations in such* statements.

18 4. If it appears from the records of the county recorder that
19 there are other notices of lien recorded against the same property at
20 the time of the commencement of the action, the lien claimant shall,
21 in addition to and after the initial publication of the notice of
22 foreclosure as provided in paragraph (b) of subsection 2, mail to
23 those other lien claimants, by registered or certified mail, or deliver
24 in person a copy of the notice of foreclosure as published.

25 5. At the time of any change in the venue of the action, the lien
26 claimant shall file a notice of pendency of the action, in the manner
27 provided in NRS 14.010, and include in the notice the court and
28 county to which the action is changed.

29 6. When separate actions are commenced by lien claimants to
30 foreclose on their respective notices of lien, the court may
31 consolidate all the actions. The consolidation does not affect or
32 change the priority of lien claims.

33 7. The court shall enter judgment according to the right of the
34 parties, and shall, by decree, proceed to hear and determine
35 the claims in a summary way, or may, if it be the district court, refer
36 the claims to a special master to ascertain and report upon the liens
37 and the amount justly due thereon. No consequential damages may
38 be recovered in an action pursuant to this section. All liens not so
39 exhibited shall be deemed to be waived in favor of those which are
40 so exhibited.

41 8. Upon petition by a lien claimant for a preferential trial
42 setting:

43 (a) The court shall give preference in setting a date for the trial
44 of an action brought pursuant to this section; and



1 (b) If a lien action is designated as complex by the court, the
2 court may take into account the rights and claims of all lien
3 claimants in setting a date for the preferential trial.

4 9. If the lienable amount of a lien claimant's lien is the subject
5 of binding arbitration:

6 (a) The court may, at the request of a party to the arbitration,
7 stay the lien claimant's action to foreclose the lien pending the
8 outcome of the binding arbitration. If the foreclosure on the lien
9 involves the rights of other lien claimants or persons whose claims
10 are not the subject of the binding arbitration, the court may stay the
11 lien claimant's foreclosure proceeding only upon terms which are
12 just and which afford the lien claimant a fair opportunity to protect
13 his lien rights and priorities with respect to other lien claimants and
14 persons.

15 (b) Upon the granting of an award by the arbitrator, any party to
16 the arbitration may seek an order from the court in the action to
17 foreclose on the lien confirming or adopting the award and
18 determining the lienable amount of the lien claimant's lien in
19 accordance with the order, if any. Upon determining the lienable
20 amount, the court shall enter a judgment or decree for the lienable
21 amount, plus all amounts that may be awarded by the court to the
22 lien claimant pursuant to NRS 108.237, and the court may include
23 as part of the lien all costs and attorney's fees awarded to the lien
24 claimant by the arbitrator and all costs and attorney's fees incurred
25 by the lien claimant pertaining to any application or motion to
26 confirm, adopt, modify or correct the award of the arbitrator. A
27 judgment or decree entered by the court pursuant to this subsection
28 may be enforced against the property as provided in subsections 10,
29 11 and 12.

30 10. On ascertaining the whole amount of the liens with which
31 the property is justly chargeable, as provided in NRS 108.221 to
32 108.246, inclusive, the court shall cause the property to be sold in
33 satisfaction of all liens and the costs of sale, including all amounts
34 awarded to all lien claimants pursuant to NRS 108.237, and any
35 party in whose favor judgment may be rendered may cause the
36 property to be sold within the time and in the manner provided for
37 sales on execution, issued out of any district court, for the sale of
38 real property.

39 11. If the proceeds of sale, after payment of the costs of sale,
40 are not sufficient to satisfy all liens to be included in the decree of
41 sale, including all amounts awarded to all lien claimants pursuant to
42 NRS 108.237, the proceeds must be apportioned according to the
43 right of the various lien claimants. If the proceeds of the sale amount
44 to more than the sum of all liens and the cost of sale, the remainder
45 must be paid over to the owner of the property.



12. Each party whose claim is not satisfied in the manner provided in this section is entitled to personal judgment for the residue against the party legally liable for it if that person has been personally summoned or has appeared in the action.

Sec. 6. NRS 108.2421 is hereby amended to read as follows:

108.2421 1. ~~[The]~~ *Except as otherwise provided in subsection 2, the* lien claimant is entitled to:

(a) Bring an action against; or

(b) If an action has been commenced, join in the pending action against,

↳ the principal and surety on the surety bond and the lien claimant's debtor.

2. *A lien claimant is not entitled to bring an action or join in the pending action against the principal and surety on the surety bond and the lien claimant's debtor pursuant to subsection 1 if the lien claimant's lien has expired pursuant to NRS 108.233.*

3. At any time after the filing of a joint case conference report pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure or, if the case is designated by the court as complex litigation, after the approval of the initial case management order by the court, each lien claimant in the action may serve upon the adverse party a "demand for preferential trial setting" and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before the Friday after the demand is filed, vacate a case or cases in a department of the court and set the lien claimant's case for hearing, on a day or days certain, to be heard within 60 days after the filing of the "demand for preferential trial setting." Only one such preferential trial setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the lien claimant in writing. If the hearing date is vacated without that stipulation, upon service and filing, a new preferential trial setting must be given.

~~[3-]~~ 4. A lien claimant shall, at the time of making his demand for a preferential trial setting, and each other party to the preferential trial shall, within 20 days after the lien claimant's service of the demand, serve upon all parties to the preferential trial the following documents and information:

(a) A copy of all documents that the party intends to rely upon at the time of the trial;

(b) A list of witnesses whom the party intends to call at the time of the trial, which must include for each witness:

(1) The name of the witness;

(2) The company for whom the witness works and title of the witness; and

(3) A brief summary of the expected testimony of the witness;



(c) Any supplemental discovery responses as required by the Nevada Rules of Civil Procedure;

(d) The identity of each person whom the party expects to call as an expert witness at the trial, together with a statement of the substance of the facts and opinions to which the expert witness is expected to testify and a summary of the grounds for each opinion;

(e) Any expert reports not previously disclosed; and

(f) A detailed summary of all claims, offsets and defenses that the party intends to rely upon at the trial.

~~[4-]~~ 5. Within 20 days after receipt of an opposing party's identification of an expert witness, a party who desires to call a rebuttal expert witness at the trial must identify each person whom the party expects to call as a rebuttal expert witness, and must provide a statement of the substance of the facts and opinions to which the rebuttal expert witness is expected to testify and a summary of the grounds for each opinion.

~~[5-]~~ 6. A prevailing lien claimant on a claim against a surety bond must be awarded the lienable amount plus the total amount that may be awarded by the court pursuant to NRS 108.237. Such a judgment is immediately enforceable and may be appealed regardless of whether any other claims asserted or consolidated actions or suits have been resolved by a final judgment.

Sec. 7. NRS 108.245 is hereby amended to read as follows:

108.245 1. Except as otherwise provided in subsection ~~[5-]~~ 7, every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or performance of work or services under his contract, deliver in person or by certified mail to the owner of the property *and the prime contractor* a preliminary notice of right to lien in substantially the following form:

NOTICE OF RIGHT TO LIEN

To:

(Owner's name and address)

The undersigned notifies you that he has supplied materials or equipment or performed work or services as follows:

.....
(General description of materials, equipment, work or services) for improvement of property identified as (property description or street address) under contract with (general contractor or subcontractor). This is not a notice that the undersigned has not been or does not expect to be paid, but a notice required by law that the



undersigned may, at a future date, record a notice of lien as provided by law against the property if the undersigned is not paid.

.....
(Claimant)

A subcontractor or equipment or material supplier who ~~[gives]~~ *does not give* such a notice ~~[must also deliver in person or send by certified mail a copy of the notice]~~ to the prime contractor ~~[for information only. The]~~ *waives any right to lien that he may possess pursuant to NRS 108.221 to 108.246, inclusive.*

2. Except as otherwise provided in subsection 3, the failure by a subcontractor to deliver the notice to the owner and the prime contractor is a ground for disciplinary proceedings against the subcontractor [under] pursuant to chapter 624 of NRS . [but does not invalidate the notice to the owner.

~~—2.]~~ *3. If the failure by a subcontractor to deliver the notice to the owner and the prime contractor is caused by the actions of the prime contractor or another subcontractor, the prime contractor or other subcontractor is subject to disciplinary proceedings pursuant to chapter 624 of NRS.*

4. Such a notice does not constitute a lien or give actual or constructive notice of a lien for any purpose.

~~[3.]~~ *5.* No lien for materials or equipment furnished or for work or services performed, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, unless the notice has been given.

~~[4.]~~ *6.* The notice need not be verified, sworn to or acknowledged.

~~[5.]~~ *7.* A prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section.

~~[6.]~~ *8.* A lien claimant who is required by this section to give a notice of right to lien to an owner and who gives such a notice has a right to lien for materials or equipment furnished or for work or services performed in the 31 days before the date the notice of right to lien is given and for the materials or equipment furnished or for work or services performed anytime thereafter until the completion of the work of improvement.

Sec. 8. NRS 108.2457 is hereby amended to read as follows:

108.2457 1. Any term of a contract that attempts to waive or impair the lien rights of a contractor, subcontractor or supplier is void. An owner, contractor or subcontractor by any term of a contract, or otherwise, may not obtain the waiver of, or impair the lien rights of, a contractor, subcontractor or supplier, except as



provided in this section. Any written consent given by a lien claimant that waives or limits his lien rights is unenforceable unless ~~[the lien claimant:~~

~~—(a) Executes] :~~

(a) The lien claimant executes and delivers a waiver and release that is signed by the lien claimant or his authorized agent in the form set forth in this section; and

~~(b) In the case of a conditional waiver and release, [receives payment of the amount identified in the conditional waiver and release.]~~ *the condition, upon which the waiver and release is based, is satisfied.*

2. An oral or written statement purporting to waive, release or otherwise adversely affect the rights of a lien claimant is not enforceable and does not create any estoppel or impairment of a lien unless:

(a) There is a written waiver and release in the form set forth in this section;

(b) The lien claimant received payment for the lien claim and then only to the extent of the payment; or

(c) Payment has been made to the lien claimant and another joint payee by way of a two-party joint check which, upon endorsement by the lien claimant and the joint check clearing the bank upon which it is drawn, shall be deemed to be payment to the lien claimant of:

(1) The amount of the joint check;

(2) The amount the owner intended to pay the lien claimant out of the joint check; or

(3) The balance owed to the lien claimant for the work and materials covered by the joint check, whichever is less.

3. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court or arbitration, provided the accord and satisfaction or settlement make specific reference to the lien rights waived or impaired and is in a writing signed by the lien claimant.

4. The waiver and release given by any lien claimant is unenforceable unless it is in the following forms in the following circumstances:

(a) Where the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress billing and the lien claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must be in the following form:



CONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT

Property Name:
Property Location :
Undersigned's Customer:
Invoice/Payment Application Number:
Check Issued By:
Payment Amount:
Payment Period ~~[]~~ *or Through Date:*

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount ~~, [or such portion of the Payment Amount as the undersigned is actually paid,]~~ and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period. Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated:.....

.....
(Company Name)

By:.....

~~[Its:]~~ *Printed Name:*

Title:



(b) Where the lien claimant has been paid in full or a part of the amount provided for in the progress billing, the waiver and release of the amount paid must be in the following form:

UNCONDITIONAL WAIVER AND RELEASE
UPON PROGRESS PAYMENT

Property Name:
Property Location :
Undersigned's Customer:
Invoice/Payment Application Number:
Payment Received From:
Payment Amount:
Payment Period ~~to~~ **or Through Date:**

The undersigned has been paid and has received a progress payment in the above referenced Payment Amount for all work, materials and equipment the undersigned furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount ~~, [or such portion of the Payment Amount as the undersigned is actually paid,]~~ and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

Dated:.....

.....
(Company Name)



* S B 4 4 8 *

By:.....

~~[ts:]~~ **Printed Name:**

Title:

(Each unconditional waiver and release must contain the following language, in type at least as large as the largest type otherwise on the document:)

Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount . ~~for the amount received.~~ If you have not been paid, use a conditional release form.

(c) Where the lien claimant is required to execute a waiver and release in exchange for or to induce payment of a final billing and the lien claimant is not paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must be in the following form:

CONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT

Property Name:

Property Location :

Undersigned's Customer:

Invoice/Payment Application Number:

Check Issued By:

Payment Amount:

Payment Period ~~[H]~~ **or Through Date:**

Amount of Disputed Claims:

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:



1 This release covers the final payment to the undersigned for all
2 work, materials or equipment furnished by the undersigned to the
3 Property or to the Undersigned's Customer and does not cover
4 payment for Disputed Claims, if any. Before any recipient of this
5 document relies on it, he should verify evidence of payment to the
6 undersigned. The undersigned warrants that he either has already
7 paid or will use the money he receives from the final payment
8 promptly to pay in full all his laborers, subcontractors, materialmen
9 and suppliers for all work, materials or equipment that are the
10 subject of this waiver and release.

11
12 Dated:.....

.....
(Company Name)

16 By:.....

18 ~~[Its:]~~ **Printed Name:**

20 **Title:**

22 (d) Where the lien claimant has been paid the final billing, the
23 waiver and release must be in the following form:

25 UNCONDITIONAL WAIVER AND RELEASE
26 UPON FINAL PAYMENT

28 Property Name:

29 Property Location :

30 Undersigned's Customer:

31 Invoice/Payment Application Number:

32 Payment Amount:

33 **Payment Received From:**

34 **Payment Period or Through Date:**

35 Amount of Disputed Claims:

36
37 The undersigned has been paid in full for all work, materials and
38 equipment furnished to his Customer for the above described
39 Property and does hereby waive and release any notice of lien, any
40 private bond right, any claim for payment and any rights under any
41 similar ordinance, rule or statute related to payment rights that the
42 undersigned has on the above described Property, except for the
43 payment of Disputed Claims, if any, noted above. The undersigned
44 warrants that he either has already paid or will use the money he
45 receives from this final payment promptly to pay in full all his



1 laborers, subcontractors, materialmen and suppliers for all work,
2 materials and equipment that are the subject of this waiver and
3 release.

4
5 Dated:.....

6
7 (Company Name)

8
9 By:.....

10
11 ~~{ts:}~~ **Printed Name:**

12
13 **Title:**

14
15 (Each unconditional waiver and release must contain the following
16 language, in type at least as large as the largest type otherwise on
17 the document:)

18
19 *Notice: This document waives rights unconditionally and*
20 *states that you have been paid for giving up those rights. This*
21 *document is enforceable against you if you sign it, even if you*
22 *have not been paid. If you have not been paid, use a*
23 *conditional release form.*
24

25 (e) Notwithstanding any language in any waiver and release
26 form set forth in this section, if the payment given in exchange for
27 any waiver and release of lien is made by check, draft or other such
28 negotiable instrument, and the same fails to clear the bank on which
29 it is drawn for any reason, then the waiver and release shall be
30 deemed null, void and of no legal effect whatsoever and all liens,
31 lien rights, bond rights, contract rights or any other right to recover
32 payment afforded to the lien claimant in law or equity will not be
33 affected by the lien claimant's execution of the waiver and release.



