

SENATE BILL NO. 352—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing mechanics' and materialmen's liens. (BDR 9-866)

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; requiring a lien claimant to provide certain proof of a lien under certain circumstances; revising the provisions governing the priority of liens; revising provisions relating to the recovery of attorney's fees and court costs; revising provisions relating to the attachment of certain liens to property; reducing the amount of a security bond required to be posted under certain circumstances; revising the contents of a notice of right to lien; revising provisions governing the waiver and release of a claim of a lien; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides the circumstances under which and manner in which a person may claim a lien for work, material or equipment used in or for the construction, alteration or repair of any improvement, property or work of improvement. (NRS 108.221-108.246)

Section 4 of this bill provides that a lien for equipment or material to be furnished must be proven by a writing signed by the owner or his representative requesting such equipment or material or by showing that the equipment or material had to be specially ordered and that such equipment or material was not delivered before the cessation of work through no fault of the lien claimant. (NRS 108.222)

Section 5 of this bill provides that a lien, mortgage or other encumbrance may have priority over a lien for the construction of a work improvement if the owner of the property or his lender provides or reserves money equal to the amount of the lien, mortgage or encumbrance to pay for the construction of a work of improvement. Additionally, if a lien, mortgage or other encumbrance which has attached to the property is foreclosed upon, the lien for the construction of the work of improvement remains attached to the property until the lien is satisfied. (NRS 108.225)



Section 6 of this bill prevents the recovery of attorney's fees and court costs for a subcontractor or supplier who fails to deliver the notice of lien to the prime contractor. (NRS 108.227)

Section 9 of this bill requires a court, instead of giving the court discretion, to award attorney's fees and court costs if the court finds that the notice of lien was pursued by the lien claimant without a reasonable basis in law or fact. (NRS 108.237)

Section 10 of this bill provides that if a lessee establishes a construction disbursement account or executes a surety bond, a lien arising out of a work of improvement attaches to the construction disbursement account or surety bond and not to the property of the lessor. (NRS 108.2403)

Sections 12 and 14 of this bill reduce the amount required for a surety bond. (NRS 108.2415, 108.2425)

Section 15 of this bill revises the contents of the notice of right to lien. (NRS 108.245)

Section 16 of this bill limits the amount a lien claimant waives or releases on his claim of a lien depending upon the form used for the written waiver and release. (NRS 108.2457)

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

Section 1. Chapter 108 of NRS is hereby amended by adding thereto a new section to read as follows:

"To be furnished" means equipment or material:

1. Which is ordered but not yet delivered to the site of the work of improvement; and

2. Against which a lien claimant must substantiate his lien.

Sec. 2. NRS 108.221 is hereby amended to read as follows:

108.221 As used in NRS 108.221 to 108.246, inclusive, unless the context otherwise requires, the words and terms defined in NRS 108.22104 to 108.22188, inclusive, ***and section 1 of this act*** have the meanings ascribed to them in those sections.

Sec. 3. NRS 108.22116 is hereby amended to read as follows:

108.22116 "Completion of the work of improvement" means:

1. The occupation or use by the owner, an agent of the owner or a representative of the owner of the work of improvement, accompanied by the cessation of all work on the work of improvement;

2. The acceptance by the owner, an agent of the owner or a representative of the owner of the work of improvement, accompanied by the cessation of all work on the work of improvement; or

3. The cessation of all work on a work of improvement for 30 consecutive days, provided a notice of completion is timely recorded and served ~~[and the work is not resumed under the same contract.]~~ ***pursuant to NRS 108.228.***



Sec. 4. NRS 108.222 is hereby amended to read as follows:

108.222 1. Except as otherwise provided in subsection ~~[2.]~~ 3, a lien claimant has a lien upon the property, any improvements for which the work, materials and equipment were furnished or to be furnished, and any construction disbursement account established pursuant to NRS 108.2403, for:

(a) If the parties agreed, by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished or to be furnished by or through the lien claimant, the unpaid balance of the price agreed upon for such work, material or equipment, as the case may be, whether performed, furnished or to be performed or furnished at the instance of the owner or his agent; ~~[and]~~

(b) If the parties did not agree, by contract or otherwise, upon a specific price or method for determining a specific price for some or all of the work, material and equipment furnished or to be furnished by or through the lien claimant, ~~[including, without limitation, any additional or changed work, material or equipment,]~~ an amount equal to the fair market value of such work, material or equipment, as the case may be, including a reasonable allowance for overhead and a profit, whether performed, furnished or to be performed or furnished at the instance of the owner or at the instance of his agent ~~[.]~~; and

(c) An amount equal to any right or remedy provided pursuant to NRS 624.606 to 624.630, inclusive.

2. *If the lien is for equipment or material to be furnished, in addition to any other requirement pursuant to NRS 108.221 to 108.246, inclusive, the lien claimant must prove his lien by providing:*

(a) A writing signed by the owner or his representative specifically requesting the equipment or material; or

(b) Proof that the equipment or material had to be specially ordered because of the unusual properties or specifications of the equipment or material and that the equipment or material was not delivered to the site before the cessation of work on the work of improvement, through no fault of the lien claimant.

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

Sec. 5. NRS 108.225 is hereby amended to read as follows:

108.225 1. ~~[The]~~ *Except as otherwise provided in this section, the* liens provided for in NRS 108.221 to 108.246, inclusive, are preferred to:



1 (a) Any lien, mortgage or other encumbrance which may have
2 attached to the property after the commencement of construction of
3 a work of improvement.

4 (b) Any lien, mortgage or other encumbrance of which the lien
5 claimant had no notice and which was unrecorded against the
6 property at the commencement of construction of a work of
7 improvement.

8 2. ~~Every~~ *Except as otherwise provided in this section, every*
9 mortgage or encumbrance imposed upon, or conveyance made of,
10 property affected by the liens provided for in NRS 108.221 to
11 108.246, inclusive, after the commencement of construction of a
12 work of improvement are subordinate and subject to the liens
13 provided for in NRS 108.221 to 108.246, inclusive, regardless of the
14 date of recording the notices of liens.

15 3. *Any lien, mortgage or other encumbrance which may have*
16 *attached to the property after the commencement of construction*
17 *of a work of improvement is preferred to the liens provided for in*
18 *NRS 108.221 to 108.246, inclusive, if:*

19 (a) *The owner of the property funds, directly from the owner*
20 *or from a lender, an amount equal to the amount of the mortgage*
21 *or other encumbrance to a construction disbursement account*
22 *which is dedicated to the work of improvement and which is*
23 *administered by a construction control; or*

24 (b) *The owner agrees, in a writing signed by the owner and the*
25 *prime contractor, that money equal to the amount of the mortgage*
26 *or other encumbrance exists and that such money provided by the*
27 *owner or a lender, has been dedicated to, set aside for and is*
28 *immediately accessible for the sole benefit of the work of*
29 *improvement to pay the prime contractor for the work, materials*
30 *and equipment necessary to construct the work of improvement.*
31 *The owner must provide written evidence of the existence,*
32 *location, accessibility and quantity of the money set aside and, if*
33 *the owner has entered into a construction loan agreement with a*
34 *lender, provide a written acknowledgment from the lender that the*
35 *money set aside cannot be used for any purpose other than the*
36 *construction of the work of improvement. If there is a lender,*
37 *the lender must pay, from the construction loan funds, all costs of*
38 *the work incurred by the prime contractor and billed to the owner*
39 *within 30 days after the lender notifies the prime contractor of the*
40 *owner's default under the construction loan agreement.*

41 4. *If a mortgage or other encumbrance that attached to the*
42 *property before or after the commencement of construction of the*
43 *work of improvement is preferred to a lien provided for in NRS*
44 *108.221 to 108.246, inclusive, and such mortgage or other*
45 *encumbrance is foreclosed upon, the lien recorded pursuant to*



NRS 108.226 remains attached to the property after the foreclosure until the lien is paid or satisfied.

Sec. 6. NRS 108.227 is hereby amended to read as follows:

108.227 1. In addition to the requirements of NRS 108.226, a copy of the notice of lien must be served upon the owner of the property within 30 days after recording the notice of lien, in one of the following ways:

(a) By personally delivering a copy of the notice of lien to the owner or registered agent of the owner;

(b) By mailing a copy of the notice of lien by certified mail, return receipt requested, to the owner at his place of residence or his usual place of business or to the registered agent of the owner at the address of the registered agent; or

(c) If the place of residence or business of the owner and the address of the registered agent of the owner, if applicable, cannot be determined, by:

(1) Fixing a copy of the notice of lien in a conspicuous place on the property;

(2) Delivering a copy of the notice of lien to a person there residing, if such a person can be found; and

(3) Mailing a copy of the notice of lien addressed to the owner at:

(I) The place where the property is located;

(II) The address of the owner as identified in the deed;

(III) The address identified in the records of the office of the county assessor; or

(IV) The address identified in the records of the county recorder of the county in which the property is located.

2. If there is more than one owner, failure to serve a copy of the notice of lien upon a particular owner does not invalidate a notice of lien if properly served upon another owner.

3. Each subcontractor who participates in the construction, improvement, alteration or repair of a work of improvement shall deliver a copy of each notice of lien required by NRS 108.226 to the prime contractor. The failure of a subcontractor to deliver the notice to the prime contractor is a ground for disciplinary proceedings pursuant to chapter 624 of NRS. *A subcontractor or supplier who fails to deliver the notice to the prime contractor is not entitled to recover attorney's fees or court costs in any action brought to foreclose the lien or to recover the amounts due the subcontractor or supplier.*

Sec. 7. NRS 108.231 is hereby amended to read as follows:

108.231 1. In every case in which a notice of lien is recorded against two or more separate buildings or mining claims that are owned by the same person and that are located on separate legal



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1 parcels that existed at the commencement of construction, the lien
2 claimant must, at the time of recording the notice of lien, designate
3 the lienable amount due to him on each building or mining claim.

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

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

28 **Sec. 8.** NRS 108.235 is hereby amended to read as follows:

29 108.235 1. A prime contractor:

30 (a) Upon a notice of lien, may recover the lienable amount as
31 may be due to him, plus all amounts that ~~may be~~ **are** awarded to
32 him by the court pursuant to NRS 108.237; and

33 (b) Upon receipt of the amount described in paragraph (a), shall
34 pay all liens for the work, equipment or materials which were
35 furnished or to be furnished to him as provided in NRS 108.221 to
36 108.246, inclusive.

37 2. In all cases where a prime contractor has been paid for the
38 work, materials or equipment which are the subject of a notice of
39 lien recorded under NRS 108.221 to 108.246, inclusive, the prime
40 contractor shall defend the owner in any action brought thereupon at
41 his own expense.

42 3. Except as otherwise provided in this subsection, if a lien
43 claimant records a notice of lien for the work, equipment or
44 materials furnished or to be furnished to the prime contractor, the
45 owner may withhold from the prime contractor the amount of



1 money for which the lien claimant's notice of lien is recorded. If the
2 lien claimant's notice of lien resulted from the owner's failure to
3 pay the prime contractor for the lien claimant's work, materials or
4 equipment, the owner shall not withhold the amount set forth in the
5 notice of lien from the prime contractor if the prime contractor or
6 lien claimant tenders a release of the lien claimant's lien to the
7 owner. In case of judgment against the owner or his property which
8 is the subject of the lien, the owner may deduct, from any amount
9 due or to become due by him to the prime contractor, the amount
10 paid by the owner to the lien claimant for which the prime
11 contractor was liable and recover back from the prime contractor
12 any amount so paid by the owner in excess of the amount the court
13 has found that the owner owes to the prime contractor.

14 **Sec. 9.** NRS 108.237 is hereby amended to read as follows:

15 108.237 1. The court shall award to a prevailing lien
16 claimant, whether on its lien or on a surety bond, the lienable
17 amount found due to the lien claimant by the court and the cost of
18 preparing and recording the notice of lien, including, without
19 limitation, attorney's fees, if any, and interest. The court shall also
20 award to the prevailing lien claimant, whether on its lien or on a
21 surety bond, the costs of the proceedings, including, without
22 limitation, reasonable attorney's fees, the costs for representation of
23 the lien claimant in the proceedings, and any other amounts as the
24 court may find to be justly due and owing to the lien claimant.

25 2. The court shall calculate interest for purposes of subsection
26 1 based upon:

27 (a) The rate of interest agreed upon in the lien claimant's
28 contract; or

29 (b) If a rate of interest is not provided in the lien claimant's
30 contract, interest at a rate equal to the prime rate at the largest bank
31 in Nevada, as ascertained by the Commissioner of Financial
32 Institutions, on January 1 or July 1, as the case may be, immediately
33 preceding the date of judgment, plus 4 percent, on the amount of the
34 lien found payable. The rate of interest must be adjusted accordingly
35 on each January 1 and July 1 thereafter until the amount of the lien
36 is paid.

37 ➤ Interest is payable from the date on which the payment is found
38 to have been due, as determined by the court.

39 3. If the lien claim is not upheld, the court ~~may~~ **shall** award
40 costs and reasonable attorney's fees to the owner or other person
41 defending against the lien claim if the court finds that the notice of
42 lien was pursued by the lien claimant without a reasonable basis in
43 law or fact.



Sec. 10. NRS 108.2403 is hereby amended to read as follows:

108.2403 1. Except as otherwise provided in NRS 108.2405, before a lessee may cause a work of improvement to be constructed, altered or repaired upon property that he is leasing, the lessee shall:

(a) Record a notice of posted security with the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired; and

(b) Either:

(1) Establish a construction disbursement account and:

(I) Fund the account in an amount equal to the total cost of the work of improvement, but in no event less than the total amount of the prime contract;

(II) Obtain the services of a construction control to administer the construction disbursement account; and

(III) Notify each person who gives the lessee a notice of right to lien of the establishment of the construction disbursement account as provided in paragraph (f) of subsection 2; or

(2) Record a surety bond for the prime contract that meets the requirements of subsection 2 of NRS 108.2415 and notify each person who gives the lessee a notice of right to lien of the recording of the surety bond as provided in paragraph (f) of subsection 2.

2. The notice of posted security required pursuant to subsection 1 must:

(a) Identify the name and address of the lessee;

(b) Identify the location of the improvement and the address, legal description and assessor's parcel number of the property upon which the improvement is or will be constructed, altered or repaired;

(c) Describe the nature of the lessee's interest in:

(1) The property upon which the improvement is or will be constructed, altered or repaired; and

(2) The improvement on such property;

(d) If the lessee establishes a construction disbursement account pursuant to subsection 1, include:

(1) The name and address of the construction control;

(2) The date that the lessee obtained the services of the construction control and the total amount of funds in the construction disbursement account; and

(3) The number of the construction disbursement account, if any;

(e) If the lessee records a surety bond pursuant to subsection 1, include:

(1) The name and address of the surety;

(2) The surety bond number;

(3) The date that the surety bond was recorded in the office of the county recorder of the county where the property is located



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1 upon which the improvement is or will be constructed, altered or
2 repaired;

3 (4) The book and the instrument or document number of the
4 recorded surety bond; and

5 (5) A copy of the recorded surety bond with the notice of
6 posted security; and

7 (f) Be served upon each person who gives a notice of right to
8 lien within 10 days after receipt of the notice of right to lien, in one
9 of the following ways:

10 (1) By personally delivering a copy of the notice of posted
11 security to the person who gives a notice of right to lien at the
12 address identified in the notice of right to lien; or

13 (2) By mailing a copy of the notice of posted security by
14 certified mail, return receipt requested, to the person who gives a
15 notice of right to lien at the address identified in the notice of right
16 to lien.

17 3. If a lessee fails to satisfy the requirements of subsection 1 of
18 this section or subsection 2 of NRS 108.2407, the prime contractor
19 who has furnished or will furnish materials or equipment for the
20 work of improvement may stop work ~~at~~ *at any time during the*
21 *construction of a work of improvement.* If the lessee:

22 (a) Satisfies the requirements of subsection 1 of this section or
23 subsection 2 of NRS 108.2407 within 25 days after any work
24 stoppage, the prime contractor who stopped work shall resume work
25 and the prime contractor and his lower-tiered subcontractors and
26 suppliers are entitled to compensation for any reasonable costs
27 and expenses that any of them have incurred because of the delay
28 and remobilization; or

29 (b) Does not satisfy the requirements of subsection 1 of this
30 section or subsection 2 of NRS 108.2407 within 25 days after the
31 work stoppage, the prime contractor who stopped work may
32 terminate his contract relating to the work of improvement and the
33 prime contractor and his lower-tiered subcontractors and suppliers
34 are entitled to recover:

35 (1) The cost of all work, materials and equipment, including
36 any overhead the prime contractor and his lower-tiered
37 subcontractors and suppliers incurred and profit the prime contractor
38 and his lower-tiered subcontractors and suppliers earned through the
39 date of termination;

40 (2) The balance of the profit the prime contractor and his
41 lower-tiered subcontractors and suppliers would have earned if the
42 contract had not been terminated;

43 (3) Any interest, costs and attorney's fees that the prime
44 contractor and his lower-tiered subcontractors and suppliers are
45 entitled to pursuant to NRS 108.237; and



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(4) Any other amount awarded by a court or other trier of fact.

4. *If a lessee establishes a construction disbursement account pursuant to subsection 1 or executes a surety bond pursuant to NRS 108.2415, a lien arising out of a work of improvement attaches to the construction disbursement account or surety bond and not to the property of the lessor.*

5. The rights and remedies provided *to a prime contractor and his lower-tiered subcontractors and suppliers* pursuant to this section are in addition to any other rights and remedies that may exist at law or in equity, including, without limitation, the rights and remedies provided pursuant to NRS 624.606 to 624.630, inclusive.

Sec. 11. NRS 108.2407 is hereby amended to read as follows:

108.2407 1. If a construction disbursement account is established and funded pursuant to subsection 2 of this section or subsection 1 of NRS 108.2403, each lien claimant has a lien upon the funds in the account for an amount equal to the lienable amount owed to him.

2. Upon the disbursement of any funds from the construction disbursement account for a given pay period:

(a) The lessee shall deposit into the account such additional funds as may be necessary to pay for the completion of the work of improvement, including, without limitation, the costs attributable to additional and changed work, material or equipment;

(b) The construction control described in subsection 1 of NRS 108.2403 shall certify in writing the amount necessary to pay for the completion of the work of improvement; and

(c) If the amount necessary to pay for the completion of the work of improvement exceeds the amount remaining in the construction disbursement account:

(1) The construction control shall give written notice of the deficiency by certified mail, return receipt requested, to the prime contractor and each person who has given the construction control a notice of right to lien; and

(2) The provisions of subsection 3 of NRS 108.2403 shall be deemed to apply.

3. The construction control shall disburse money to lien claimants from the construction disbursement account for the lienable amount owed such lien claimants.

4. A lien claimant may notify the construction control of a claim of lien by:

(a) Recording a notice of lien pursuant to NRS 108.226; or

(b) Personally delivering or mailing by certified mail, return receipt requested, a written notice of a claim of lien to the



1 construction control within 90 days after the completion of the work
2 of improvement.

3 5. Except as otherwise provided in subsection 6, the
4 construction control shall pay a legitimate claim of lien upon receipt
5 of the written notice described in subsection 4 from the funds
6 available in the construction disbursement account.

7 6. The construction control may bring an action for
8 interpleader in the district court for the county where the property or
9 some part thereof is located if:

10 (a) The construction control reasonably believes that all or a
11 portion of a claim of lien is not legitimate; or

12 (b) The construction disbursement account does not have
13 sufficient funds to pay all claims of liens for which the construction
14 control has received notice.

15 7. If the construction control brings an action for interpleader
16 pursuant to paragraph (a) of subsection 6, the construction control
17 shall pay to the lien claimant any portion of the claim of lien that the
18 construction control reasonably believes is legitimate.

19 8. If an action for interpleader is brought pursuant to
20 subsection 6, the construction control shall:

21 (a) Deposit with the court an amount equal to ~~1.5~~ 1.25 times
22 the amount of the lien claims to the extent that there are funds
23 available in the construction disbursement account;

24 (b) Provide notice of the action for interpleader by certified
25 mail, return receipt requested, to each person:

26 (1) Who gives the construction control a notice of right to
27 lien;

28 (2) Who serves the construction control with a claim of lien;

29 (3) Who has performed work or furnished materials or
30 equipment for the work of improvement; or

31 (4) Of whom the construction control is aware may perform
32 work or furnish materials or equipment for the work of
33 improvement; and

34 (c) Publish a notice of the action for interpleader once each
35 week, for 3 successive weeks, in a newspaper of general circulation
36 in the county in which the work of improvement is located.

37 9. A construction control who brings an action for interpleader
38 pursuant to subsection 6 is entitled to be reimbursed from the
39 construction disbursement account for the reasonable costs that he
40 incurred in bringing such action.

41 10. If a construction control for a construction disbursement
42 account established by a lessee does not provide a proper
43 certification as required pursuant to paragraph (b) of subsection 2 or
44 does not comply with any other requirement of this section, the



1 construction control and its bond are liable for any resulting
2 damages to any lien claimants.

3 **Sec. 12.** NRS 108.2415 is hereby amended to read as follows:

4 108.2415 1. To obtain the release of a lien for which notice
5 of lien has been recorded against the property, the principal and a
6 surety must execute a surety bond in an amount equal to ~~1.5~~ 1.25
7 times the lienable amount in the notice of lien, which must be in the
8 following form:

9
10 (Assessor's Parcel Numbers)

11
12 (Title of court and cause, if action has been commenced)

13
14 WHEREAS, (name of principal), located at
15 (address of principal), desires to give a
16 bond for releasing the following described property owned by
17 (name of owners) from that certain notice
18 of lien in the sum of \$..... recorded (month) (day),
19 (year), in the office of the recorder in (name of
20 county where the property is located):

21
22 (Legal Description)

23
24 NOW, THEREFORE, the undersigned principal and surety do
25 hereby obligate themselves to the lien claimant named in the notice
26 of lien,, (name of lien claimant) under the
27 conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in
28 the sum of \$..... (1 ~~1 1/2~~ 1/4 x lienable amount), from which
29 sum they will pay the lien claimant that amount as a court of
30 competent jurisdiction may adjudge to have been secured by his
31 lien, including the total amount awarded pursuant to NRS 108.237,
32 but the liability of the surety may not exceed the penal sum of the
33 surety bond.

34 IN TESTIMONY WHEREOF, the principal and surety have
35 executed this bond at, Nevada, on the day
36 of the month of of the year

37
38
39 (Signature of Principal)

40
41 (Surety Corporation)

42 By.....

43 (Its Attorney in Fact)



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1 State of Nevada }
2 } ss.
3 County of }

4
5 On (month) (day), (year), before me, the undersigned,
6 a notary public of this County and State, personally appeared
7 who acknowledged that he executed the
8 foregoing instrument as principal for the purposes therein mentioned
9 and also personally appeared known (or
10 satisfactorily proved) to me to be the attorney in fact of the surety
11 that executed the foregoing instrument, known to me to be the
12 person who executed that instrument on behalf of the surety therein
13 named, and he acknowledged to me that the surety executed the
14 foregoing instrument.

15
16
17 (Notary Public in and for
18 the County and State)
19

20 2. To obtain the release of all prospective and existing lien
21 rights of lien claimants related to a work of improvement, the
22 principal and a surety must execute and cause to be recorded a
23 surety bond in an amount equal to ~~1.5~~ 1/2 times the amount of the
24 prime contract, which must be in the following form:

25
26 (Assessor's Parcel Numbers)

27
28 (Title of court and cause, if action has been commenced)
29

30 WHEREAS, (name of principal), located at
31 (address of principal), desires to give a
32 bond for releasing the following described property owned by
33 (name of owners) from all prospective
34 and existing lien rights and notices of liens arising from materials,
35 equipment or work provided or to be provided under the prime
36 contract described as follows:

37
38 (Parties to the Prime Contract)
39 (Amount of the Prime Contract)
40 (Date of the Prime Contract)
41 (Summary of Terms of the Prime Contract)
42

43 WHEREAS, the property that is the subject of the surety bond is
44 described as follows:



1 an action to enforce the lien. A certified copy of the recorded surety
2 bond shall be deemed an original for purposes of this section.

3 4. Upon the recording of the surety bond, the principal must
4 serve a file-stamped copy of the recorded surety bond in the
5 following manner:

6 (a) If a lien claimant has appeared in an action that is pending to
7 enforce the notice of lien, service must be made by certified or
8 registered mail, return receipt requested, upon the lien claimant at
9 the address set forth in the lien and the lien claimant's counsel of
10 record at his place of business;

11 (b) If a notice of lien is recorded at the time the surety bond is
12 recorded and no action is pending to enforce the notice of lien,
13 personal service must be made upon each lien claimant pursuant to
14 Rule 4 of the Nevada Rules of Civil Procedure; or

15 (c) If no notice of lien is recorded at the time the surety bond is
16 recorded, service must be made by personal service or certified
17 mail, return receipt requested, upon each lien claimant and
18 prospective lien claimant that has provided or thereafter provides the
19 owner or lessee with a notice of a right to lien. Such service must be
20 within 10 days after the recording of the surety bond, or the service
21 of notice of the right to lien upon the owner by a lien claimant,
22 whichever is later.

23 5. Failure to serve the surety bond as provided in subsection 4
24 does not affect the validity of the surety bond, but the statute of
25 limitations on any action on the surety bond, including a motion
26 excepting to the sufficiency of the surety pursuant to NRS 108.2425,
27 is tolled until notice is given.

28 6. Subject to the provisions of NRS 108.2425, the recording
29 and service of the surety bond pursuant to:

30 (a) Subsection 1 releases the property described in the surety
31 bond from the lien and the surety bond shall be deemed to replace
32 the property as security for the lien.

33 (b) Subsection 2 releases the property described in the surety
34 bond from any liens and prospective liens for work, materials or
35 equipment related to the prime contract and the surety bond shall be
36 deemed to replace the property as security for the lien.

37 *7. The provisions of this section do not relieve a lien claimant*
38 *from complying with any obligation or requirement for perfection*
39 *of a lien pursuant to NRS 108.221 to 108.246, inclusive. The*
40 *provisions of this section do not waive or impair any defense the*
41 *principal or surety to a bond or any other interested party may*
42 *assert to the claim of a lien on the surety bond. A lien claimant*
43 *may not recover on a surety bond pursuant to this section unless*
44 *he would be entitled to recover on the claim of lien released by this*
45 *section.*



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Sec. 13. NRS 108.2421 is hereby amended to read as follows:

108.2421 1. The lien claimant is entitled to bring an action against the principal and surety on the surety bond and the lien claimant's debtor in any court of competent jurisdiction that is located within the county where the property upon which the work of improvement is located.

2. If an action by a lien claimant to foreclose upon a lien has been brought:

(a) Before the surety bond is recorded:

(1) The lien claimant may amend his complaint to state a claim against the principal and the surety on the surety bond; or

(2) The liability of the principal and surety on the surety bond may be enforced pursuant to NRS 108.2423; or

(b) After the surety bond is recorded:

(1) If the surety bond is recorded pursuant to subsection 1 of NRS 108.2415, the lien claimant may bring an action against the principal and the surety not later than 9 months after the date that the lien claimant was served with notice of the recording of the surety bond.

(2) If the surety bond is recorded pursuant to subsection 2 of NRS 108.2415, the lien claimant may bring an action against the principal and the surety within the later of:

(I) Nine months after the date that the lien claimant was served with notice of the recording of the surety bond; or

(II) Nine months after the date of the completion of the work of improvement.

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.

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,



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1 serve upon all parties to the preferential trial the following
2 documents and information:

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

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

7 (1) The name of the witness;

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

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

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

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

18 (e) Any expert reports not previously disclosed; and

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

21 5. Within 20 days after receipt of an opposing party's
22 identification of an expert witness, a party who desires to call a
23 rebuttal expert witness at the trial must identify each person whom
24 the party expects to call as a rebuttal expert witness, and must
25 provide a statement of the substance of the facts and opinions to
26 which the rebuttal expert witness is expected to testify and a
27 summary of the grounds for each opinion.

28 6. A prevailing lien claimant on a claim against a surety bond
29 must be awarded the lienable amount plus the total amount that
30 ~~may be~~ is awarded by the court pursuant to NRS 108.237, so long
31 as the liability of the surety is limited to the penal sum of the surety
32 bond. Such a judgment is immediately enforceable and may be
33 appealed regardless of whether any other claims asserted or
34 consolidated actions or suits have been resolved by a final judgment.

35 **Sec. 14.** NRS 108.2425 is hereby amended to read as follows:

36 108.2425 1. The lien claimant may, within 15 days after the
37 service of a copy of the surety bond pursuant to subsection 4 of NRS
38 108.2415, file a motion with the clerk of the court in a pending
39 action, or if no action has been commenced, file a petition with the
40 court, excepting to the sufficiency of the surety or the surety bond,
41 and shall, at the same time and together with that motion or petition,
42 file an affidavit setting forth the grounds and basis of the exceptions
43 to the surety or the surety bond, and shall serve a copy of the motion
44 or petition and a copy of the affidavit upon the principal at the
45 address set forth in the surety bond within 5 business days after the



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1 date of filing. A hearing must be had upon the justification of the
2 surety or the surety bond not less than 10 days and not more than 20
3 days after the filing of the motion or petition. If the court determines
4 that the surety or surety bond is insufficient, the lien claimant's lien
5 will remain against the property or the court may allow the
6 substitution of a sufficient surety and surety bond.

7 2. If, at any time after the recording of a surety bond pursuant
8 to NRS 108.2415, the surety becomes unauthorized to transact
9 surety business in this State pursuant to NRS 679A.030 or is
10 dropped from the United States Department of the Treasury's
11 Listing of Approved Sureties or there exists any other good cause, a
12 lien claimant or other person having an interest in the surety bond
13 may apply to the district court in a pending action, or commence an
14 action if none is pending, for an order to require the principal to
15 provide additional security or to change, substitute or add securities,
16 or to enforce or change any other matter affecting the security
17 provided by the surety bond.

18 3. If a court finds that the amount of a surety bond recorded
19 pursuant to NRS 108.2415 is insufficient to pay the total amount
20 that ~~{may be}~~ *is* awarded by the court pursuant to NRS 108.237, the
21 court shall order the principal to obtain additional security or to
22 change or substitute securities so that the amount of the security
23 provided is ~~{1.5}~~ *1.25* times the total amount that may be awarded.

24 4. Any surety that records or consents to the recording of a
25 surety bond pursuant to NRS 108.2415 will remain fully liable to
26 any lien claimant for up to the penal sum of the surety bond
27 regardless of the payment or nonpayment of any surety bond
28 premium.

29 **Sec. 15.** NRS 108.245 is hereby amended to read as follows:

30 108.245 1. Except as otherwise provided in subsection 5,
31 every lien claimant, other than ~~{one}~~ *an individual* who performs
32 only labor, who claims the benefit of NRS 108.221 to 108.246,
33 inclusive, shall, at any time after *entering into an agreement for* the
34 ~~{first}~~ delivery of material or *equipment or the* performance of work
35 or services , ~~{under his contract,}~~ deliver in person or by certified
36 mail to the owner of the property *and the prime contractor* a notice
37 of right to lien in substantially the following form:

38
39 NOTICE OF RIGHT TO LIEN

40 ~~{To:~~
41 ~~.....(Owner's name and address)}~~

42
43 *Property Owner's Name:*
44 *Property Owner's Address:.....*
45 *Property's Address or Location:*



1 *Prime Contractor's Name:*
2 *Prime Contractor's Address:*.....
3 *Claimant's Name:*.....
4 *Claimant's Address:*.....
5 *Claimant's Telephone Number:*.....
6 *Total Anticipated Cost of Equipment, Materials, Labor and*
7 *Services to be Provided:*.....
8

9 The undersigned notifies you that he has supplied materials or
10 equipment or performed work or services as follows:
11

12
13 (General description of materials, equipment, work or services ~~to~~
14 for improvement of property identified ~~as (property description or~~
15 ~~street address) under contract with ()~~ *above and the name and*
16 *address of the* general contractor or subcontractor ~~to~~ *with whom*
17 *you have contracted for said materials, equipment, work or*
18 *services if different from the prime contractor listed above.* This is
19 not a notice that the undersigned has not been or does not expect to
20 be paid, but a notice required by law that the undersigned may, at a
21 future date, record a notice of lien as provided by law against the
22 property if the undersigned is not paid.)
23

24
25(Claimant)
26 *Signature of Claimant:*.....
27 *Printed Name:*.....
28 *Position or Title:*.....
29 *Company Name:*.....
30 *Company Address (if different from Claimant's address):*.....
31 *Date Signed:*.....
32

33 A subcontractor or equipment or material supplier who gives such a
34 notice must also deliver in person or send by certified mail a copy of
35 the notice to the prime contractor . ~~[for information only.]~~ The
36 failure by a subcontractor to deliver the notice to the prime
37 contractor is a ground for disciplinary proceedings against the
38 subcontractor under chapter 624 of NRS . ~~[but does not invalidate~~
39 ~~the notice to the owner.]~~
40

41 2. ~~[Such a]~~ *A notice of right to lien* does not constitute a lien or
42 give actual or constructive notice of a lien for any purpose.

43 3. No lien for materials or equipment furnished or for work or
44 services performed, except labor ~~to~~ *performed by an individual,*
45 may be perfected or enforced pursuant to NRS 108.221 to 108.246,



1 inclusive, unless the notice *of right to lien* has been given ~~[]~~ *to the*
2 *owner and prime contractor.*

3 4. The notice need not be verified, sworn to or acknowledged.

4 5. A prime contractor or other person who contracts directly
5 with an owner or sells materials directly to an owner is not required
6 to give notice pursuant to this section.

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

14 **Sec. 16.** NRS 108.2457 is hereby amended to read as follows:

15 108.2457 1. Any term of a contract that attempts to waive or
16 impair the lien rights of a contractor, subcontractor or supplier is
17 void. An owner, contractor or subcontractor by any term of a
18 contract, or otherwise, may not obtain the waiver of, or impair the
19 lien rights of, a contractor, subcontractor or supplier, except as
20 provided in this section. Any written consent given by a lien
21 claimant that waives or limits his lien rights is unenforceable unless
22 the lien claimant:

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

26 (b) In the case of a conditional waiver and release, receives
27 payment of the amount identified in the conditional waiver and
28 release.

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

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

35 (b) ~~[The]~~ *If the written waiver and release is in the form set*
36 *forth in paragraph (a) or (c) of subsection 5, the* lien claimant
37 received payment for the ~~[lien]~~ *waiver and release* and then only to
38 the extent of the payment received ~~[]~~ *or the amount specified in the*
39 *waiver and release if the payment was made by a two-party joint*
40 *check pursuant to subsection 3.*

41 3. Payment in the form of a two-party joint check made
42 payable to a lien claimant and another joint payee who are in privity
43 with each other shall, upon endorsement by the lien claimant and the
44 joint check clearing the bank upon which it is drawn, be deemed to
45 be payment to the lien claimant for only:



(a) The amount of the joint check;
(b) The amount the payor intended to pay the lien claimant out of the joint check; or

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

4. 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 makes specific reference to the lien rights waived or impaired and is in a writing signed by the lien claimant.

5. 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:
Payment Period:
Payment Amount:

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 *during the Payment Period* 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 *thereafter* that are not paid. 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:

(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 Period:.....

Payment Amount:

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 *during the Payment Period* 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



1 Payment Application [~~but only to the extent of the Payment~~
2 ~~Amount or such portion of the Payment Amount as the undersigned~~
3 ~~is actually paid,~~ through (date) and does not cover
4 any retention withheld, any items, modifications or changes pending
5 approval, disputed items and claims, or items furnished *thereafter*
6 that are not paid. The undersigned warrants that he either has
7 already paid or will use the money he receives from this progress
8 payment promptly to pay in full all his laborers, subcontractors,
9 materialmen and suppliers for all work, materials or equipment that
10 are the subject of this waiver and release.

11
12 Dated:.....

.....
(Company Name)

13
14
15
16 By:.....

17
18 Its:.....

19
20 (Each unconditional waiver and release must contain the following
21 language, in type at least as large as the largest type otherwise on
22 the document:)

23
24 Notice: This document waives rights unconditionally and
25 states that you have been paid for giving up those rights. This
26 document is enforceable against you if you sign it to the
27 extent of the Payment Amount or the amount received. If you
28 have not been paid, use a conditional release form.
29

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

36
37 **CONDITIONAL WAIVER AND RELEASE**
38 **UPON FINAL PAYMENT**
39

40 Property Name:.....
41 Property Location:
42 Undersigned's Customer:
43 Invoice/Payment Application Number:
44 Payment Amount:



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1 Payment Period:.....
2 Amount of Disputed Claims:.....
3

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

13 This release covers the final payment to the undersigned for all
14 work, materials or equipment furnished by the undersigned to the
15 Property or to the Undersigned's Customer and does not cover
16 payment for Disputed Claims, if any. Before any recipient of this
17 document relies on it, he should verify evidence of payment to the
18 undersigned. The undersigned warrants that he either has already
19 paid or will use the money he receives from the final payment
20 promptly to pay in full all his laborers, subcontractors, materialmen
21 and suppliers for all work, materials or equipment that are the
22 subject of this waiver and release.
23

24 Dated:.....

.....
(Company Name)

25
26
27
28 By:.....
29

30 Its:.....
31

32 (d) Where the lien claimant has been paid the final billing, the
33 waiver and release must be in the following form:
34

35 UNCONDITIONAL WAIVER AND RELEASE
36 UPON FINAL PAYMENT
37

38 Property Name:.....
39 Property Location:
40 Undersigned's Customer:
41 Invoice/Payment Application Number:.....
42 Payment Amount:
43 Amount of Disputed Claims:.....



The undersigned has been paid in full for all work, materials and equipment 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, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he either has already paid or will use the money he receives from this final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

Dated:.....

.....
(Company Name)

By:

Its:

(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, even if you have not been paid. If you have not been paid, use a conditional release form.

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

