

ASSEMBLY BILL NO. 412—ASSEMBLYMEN CONKLIN,
OHRENSCHALL, HORNE, DALY; ATKINSON AND OCEGUERA

MARCH 21, 2011

Referred to Committee on Judiciary

SUMMARY—Revises various provisions governing mechanics' and materialmen's liens. (BDR 9-833)

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 certain owners and lessees to obtain the services of an escrow agency and to establish trust accounts for amounts withheld from payment to contractors and subcontractors; requiring those owners and lessees to record a notice of establishment of a trust account under certain circumstances; establishing requirements for administering such trust accounts; providing that a lien claimant has a lien against such retention amounts and trust accounts under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, contractors and subcontractors who provide work, material or equipment for the construction, alteration or repair of property or improvements to property have a lien against the property, improvements and certain disbursement accounts for a certain amount related to that work, material or equipment. (NRS 108.222) **Section 8** of this bill requires certain owners and lessees for certain contracts for construction to establish trust accounts for retention amounts, which are certain amounts withheld from payment to contractors and subcontractors until the work is completed or the materials or equipment are furnished. Specifically, **section 8** requires those owners and lessees to obtain the services of an escrow agency and record a notice of establishment of a trust account if: (1) the total price or estimated budget of the contract is \$1,000,000 or more; and (2) the owner or lessee is authorized by the contract to withhold a retention amount. **Section 9** of this bill establishes requirements for the retention amounts.

Section 10 of this bill requires, with certain exceptions, an owner or lessee who withholds a retention amount to immediately cause the withheld amount to be deposited in a trust account. If the lessee, pursuant to existing law, establishes a



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construction disbursement account which funds the account in an amount equal to the total cost of the work of improvement, **section 10** requires the retention amount to be transferred from the construction distribution account to the trust account. **Section 10** also provides that, under certain circumstances, an owner, lessee and contractor has a claim against the retention amount if the contractor or subcontractor with whom the person contracted does not perform or complete the work required by the contract.

Section 11 of this bill establishes the requirements for administering such trust accounts, including, without limitation, the requirements for keeping records and the procedures for an accounting of such trust accounts. **Section 11** further provides that an escrow agency and its bond are liable for certain resulting damages if the escrow agency fails to comply with those requirements.

Section 14 of this bill provides, with certain exceptions, that contractors or subcontractors who provide work, material or equipment for the construction, alteration or repair of property or improvements to property have a lien against such retention amounts and trust accounts in addition to having a lien against the property and improvements and any construction disbursement account that has been established.

Under existing law, certain persons, including, without limitation, certain financial institutions, attorneys rendering services in the performance of their duties as attorneys, and any person doing any act under order of any court, are exempt from the provisions governing escrow agencies and agents. (NRS 645A.015) **Section 22** of this bill provides that those persons are not exempt from the provisions governing escrow agencies and agents if they are administering certain trust accounts established for retention amounts.

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 the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. *“Escrow” has the meaning ascribed to it in NRS 645A.010.*

Sec. 3. *“Escrow agency” means a person licensed to engage in the business of administering escrows pursuant to chapter 645A of NRS.*

Sec. 4. *“Higher-tiered contractor” means a prime contractor or subcontractor who has entered into a contract with a lower-tiered subcontractor pursuant to which the lower-tiered subcontractor has agreed to provide work, materials or equipment for the improvement of property or the construction, alteration or repair of any improvement, property or work of improvement.*

Sec. 5. *“Lower-tiered subcontractor” means a subcontractor or supplier who has agreed in a contract with a prime contractor or higher-tiered contractor to provide work, materials or equipment for the improvement of property or the construction, alteration or repair of any improvement, property or work of improvement.*



1 **Sec. 6.** *“Retention amount” means an amount or percentage*
2 *of a contract or of the periodic payments to be made to a prime*
3 *contractor or a lower-tiered subcontractor that an owner, lessee or*
4 *prime contractor is authorized to withhold pursuant to the*
5 *contract and sections 2 to 11, inclusive, of this act until the prime*
6 *contractor or a lower-tiered subcontractor completes the*
7 *performance of work or the provision of materials or equipment*
8 *pursuant to the terms of the contract.*

9 **Sec. 7.** *“Supplier” means a person who provides materials or*
10 *equipment used, consumed or incorporated or to be used,*
11 *consumed or incorporated in the improvement of property or the*
12 *construction, alteration or repair of any improvement, property or*
13 *work of improvement.*

14 **Sec. 8. 1.** *An owner, lessee, higher-tiered contractor, lower-*
15 *tiered contractor and escrow agency shall comply with the*
16 *requirements of this section and sections 9, 10 and 11 of this act*
17 *if:*

18 (a) *The owner or lessee and a prime contractor have entered*
19 *into a prime contract for the improvement of property or the*
20 *construction, alteration or repair of any improvement, property or*
21 *work of improvement;*

22 (b) *The total price or estimated budget of the prime contract is*
23 *\$1,000,000 or more; and*

24 (c) *The owner or lessee of property about which the prime*
25 *contract relates is authorized pursuant to the contract to withhold*
26 *a retention amount.*

27 **2.** *If an owner or lessee and a prime contractor enter into a*
28 *contract described in subsection 1, before the owner or lessee may*
29 *cause the improvement or work of improvement to be constructed,*
30 *altered or repaired, the owner or lessee shall:*

31 (a) *Obtain the services of an escrow agency to hold a retention*
32 *amount in trust; and*

33 (b) *Record a notice of establishment of a trust account with the*
34 *county recorder of the county where the property is located upon*
35 *which the improvement or work of improvement is or will be*
36 *constructed, altered or repaired.*

37 **3.** *The local government authority responsible for issuing any*
38 *required building permit shall not issue the building permit unless*
39 *the owner or lessee has satisfied the requirements set forth in*
40 *subsection 2.*

41 **4.** *The notice of establishment of a trust account required*
42 *pursuant to subsection 2 must:*

43 (a) *Identify the name and address of the owner or lessee;*

44 (b) *Identify the location of the improvement or work of*
45 *improvement and the address, legal description and assessor’s*



1 *parcel number of the property upon which the improvement or*
2 *work of improvement will be constructed, altered or repaired;*

3 *(c) Describe the nature of the owner or lessee's interest in:*

4 *(1) The property upon which the improvement or work of*
5 *improvement will be constructed, altered or repaired; and*

6 *(2) The improvement or work of improvement on such*
7 *property;*

8 *(d) Include the name and address of the escrow agency;*

9 *(e) Include the date on which the owner or lessee obtained the*
10 *services of the escrow agency; and*

11 *(f) The number of the trust account.*

12 *5. The notice of establishment of a trust account required*
13 *pursuant to subsection 2 must be signed and verified by the owner*
14 *or lessee or the owner or lessee's authorized representative.*

15 *6. If an owner or lessee fails to satisfy the requirements of*
16 *this section or sections 9, 10 or 11 of this act, the prime contractor*
17 *who has furnished or will furnish materials or equipment for the*
18 *improvement or work of improvement may stop work after giving*
19 *written notice to the owner or lessee. If the prime contractor stops*
20 *work pursuant to this subsection, the prime contractor's lower-*
21 *tiered subcontractors may stop work. If the owner or lessee:*

22 *(a) Satisfies the requirements of this section and sections 9, 10*
23 *and 11 of this act within 25 days after any work stoppage, the*
24 *prime contractor and the prime contractor's lower-tiered*
25 *subcontractors who stopped work shall resume work and the*
26 *prime contractor and the prime contractor's lower-tiered*
27 *subcontractors are entitled to compensation from the owner or*
28 *lessee for any reasonable costs and expenses that any of them*
29 *have incurred because of the delay and remobilization; or*

30 *(b) Does not satisfy the requirements of this section and*
31 *sections 9, 10 and 11 of this act within 25 days after the work*
32 *stoppage, the prime contractor may terminate the contract relating*
33 *to the improvement or work of improvement and the prime*
34 *contractor and the prime contractor's lower-tiered subcontractors*
35 *are entitled to recover from the owner or lessee:*

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

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



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(3) Any interest, costs and attorney's fees that the prime contractor and the lower-tiered subcontractors are entitled to pursuant to specific statute or a contract; and

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

7. In addition to the interest, costs and attorney's fees that the prime contractor and the lower-tiered subcontractors are entitled to pursuant to subsection 6, the prime contractor and the lower-tiered subcontractors are entitled to recover from the owner or lessee who fails to satisfy the requirements of this section and sections 9, 10 and 11 of this act, the interest, costs and attorney's fees incurred by the prime contractor and lower-tiered subcontractors in collecting the retention amount.

8. The rights and remedies provided pursuant to this section are in addition to any other rights and remedies that may exist at law or in equity.

Sec. 9. 1. A retention amount must:

(a) Not exceed 10 percent of:

(1) The total price or estimated budget of the contract; or

(2) Any periodic payment to be made to the prime contractor or the lower-tiered subcontractors;

(b) Be held in trust by an escrow agency for the benefit of the prime contractor or the lower-tiered subcontractors from whom it was withheld; and

(c) Be:

(1) Deposited by an escrow agency in a financial institution that is federally insured or insured by a private insurer approved pursuant to NRS 678.755;

(2) Designated as a trust account or other account designated to indicate that the money in the account is not the money of the escrow agency; and

(3) Kept separate from money belonging to the escrow agency.

2. Upon being withheld, a retention amount is the separate property of the prime contractor or the lower-tiered subcontractors from whom it was withheld, regardless of whether the retention amount has been deposited in a trust account.

Sec. 10. 1. Except as otherwise provided in subsection 2, if an owner or lessee withholds or causes to be withheld a retention amount from a payment to be made to a prime contractor and the lower-tiered subcontractors, the owner or lessee shall cause the withheld amount to be immediately deposited in a trust account established pursuant to section 8 of this act.

2. If a construction disbursement account is established pursuant to subsection 1 of NRS 108.2403, the construction



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1 *control shall immediately transfer the retention amount from the*
2 *construction disbursement account to the trust account established*
3 *pursuant to section 8 of this act.*

4 *3. If a prime contractor or a lower-tiered subcontractor does*
5 *not perform or complete the work required by a prime contract,*
6 *the owner, lessee or higher-tiered contractor with whom the prime*
7 *contractor or lower-tiered subcontractor contracted has a claim*
8 *against the prime contractor's or the lower-tiered subcontractor's*
9 *ownership interest in the retention amount to the extent of any*
10 *compensable damages authorized pursuant to the contract and*
11 *established in court or in an arbitral proceeding.*

12 *4. An owner or lessee shall pay, or cause the escrow agency*
13 *to pay, to the prime contractor or the lower-tiered subcontractors,*
14 *the retention amount as provided in subsection 1 of NRS 624.620*
15 *regardless of whether the retention amount has been deposited in*
16 *a trust account.*

17 *5. Unless a shorter period for payment is provided in a*
18 *contract entered into between a higher-tiered contractor and a*
19 *lower-tiered subcontractor, within 10 days after the higher-tiered*
20 *contractor receives payment of a retention amount from an owner,*
21 *lessee or escrow agency that includes any amount owed to the*
22 *lower-tiered subcontractor for performance or provision of work,*
23 *materials or equipment, the higher-tiered contractor shall pay the*
24 *lower-tiered subcontractor that portion of the retention amount*
25 *owed to the lower-tiered subcontractor.*

26 *6. An owner or lessee shall provide written proof to a building*
27 *inspector or other authority that the entire retention amount has*
28 *been:*

29 *(a) Held in trust by an escrow agency and deposited in a*
30 *financial institution as required pursuant to section 9 of this act;*

31 *(b) Deposited with the court in an action for interpleader*
32 *brought pursuant to section 11 of this act; or*

33 *(c) Fully paid to the prime contractor and the lower-tiered*
34 *subcontractors to whom it is owed,*

35 *↳ as a condition precedent to the issuance of a certificate of*
36 *occupancy or temporary certificate of occupancy for an*
37 *improvement or work of improvement.*

38 **Sec. 11.** *1. If a trust account is established and funded*
39 *pursuant to section 8 of this act, each lien claimant has an*
40 *ownership interest in and a lien upon the funds held in the trust*
41 *account for an amount equal to that portion of the retention*
42 *amount withheld from the lien claimant and held in the trust*
43 *account.*

44 *2. The escrow agency shall keep records of all transactions*
45 *with respect to the trust account, including, without limitation, the*



1 retention amount received from the owner or lessee and any
2 amounts paid from the trust account.

3 3. Within 5 days after an owner, lessee or escrow agency
4 receives a request for an accounting of the trust account from a
5 prime contractor or lower-tiered subcontractor, the owner, lessee
6 or escrow agency shall comply with the request. The accounting
7 must be in writing and must include the following information:

8 (a) The amount and date on which any retention amount was
9 received and deposited in the trust account;

10 (b) The amount, date and payee of any retention amount
11 withdrawn and paid from the trust account; and

12 (c) The retention amount held in the trust account as of the
13 date on which the owner, lessee or escrow agency complied with
14 the request.

15 4. The escrow agency may bring an action for interpleader in
16 the district court for the county where the improvement or work of
17 improvement is located if the escrow agency receives:

18 (a) A written demand for payment of all or a portion of the
19 retention amount from a prime contractor or the lower-tiered
20 subcontractors who possess an ownership interest in the retention
21 amount; or

22 (b) A written notice of claim from an owner, lessee or higher-
23 tiered contractor against the prime contractor's or the lower-tiered
24 subcontractors' ownership interest in all or a portion of the
25 retention amount.

26 5. If an action for interpleader is brought pursuant to
27 subsection 4, the escrow agency shall:

28 (a) Deposit with the court the retention amount held in the
29 trust account;

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

32 (1) Who provided to the escrow agency a written demand
33 for payment or a written notice of claim as described in
34 subsection 4;

35 (2) Who provides to the escrow agency a notice of right to
36 lien;

37 (3) Who serves the escrow agency with a claim of lien;

38 (4) Who has performed work or furnished materials or
39 equipment for the work of improvement;

40 (5) Who has recorded a notice of lien pursuant to NRS
41 108.226; or

42 (6) Of whom the escrow agency is aware may perform work
43 or furnish materials or equipment for the improvement or work of
44 improvement; and



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

6. An escrow agency who brings an action for interpleader pursuant to subsection 4 is entitled to be reimbursed from the retention amount for the reasonable costs that the escrow agency incurred in bringing such action.

7. If an escrow agency does not comply with the requirements of this section, the escrow agency and its bond are liable for any resulting damages to any lien claimants.

Sec. 12. NRS 108.221 is hereby amended to read as follows:

108.221 As used in NRS 108.221 to 108.246, inclusive, *and sections 2 to 11, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 108.22104 to 108.22188, inclusive, *sections 2 to 7, inclusive, of this act* have the meanings ascribed to them in those sections.

Sec. 13. NRS 108.22132 is hereby amended to read as follows:

108.22132 "Lien" means the statutory rights and security interest in ~~fa~~:

1. A construction disbursement account established pursuant to NRS 108.2403 ~~fa~~;

2. A trust account established pursuant to section 8 of this act;

3. A retention amount; or ~~property~~

4. Property or any improvements thereon provided to a lien claimant by NRS 108.221 to 108.246, inclusive ~~fa~~, *and sections 2 to 11, inclusive, of this act*.

Sec. 14. NRS 108.222 is hereby amended to read as follows:

108.222 1. Except as otherwise provided in subsection 2, a lien claimant has a lien upon the property, any improvements for which the work, materials and equipment were furnished or to be furnished, *any retention amount* and any construction disbursement account established pursuant to NRS 108.2403 ~~fa~~ *or trust account established pursuant to section 8 of this act*, 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 the owner's 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



1 all of the work, material and equipment furnished or to be furnished
2 by or through the lien claimant, including, without limitation, any
3 additional or changed work, material or equipment, an amount equal
4 to the fair market value of such work, material or equipment, as the
5 case may be, including a reasonable allowance for overhead and
6 a profit, whether performed, furnished or to be performed or
7 furnished at the instance of the owner or at the instance of the
8 owner's agent.

9 2. If a contractor or professional is required to be licensed
10 pursuant to the provisions of NRS to perform the work, the
11 contractor or professional will only have a lien pursuant to
12 subsection 1 if the contractor or professional is licensed to perform
13 the work.

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

15 108.245 1. Except as otherwise provided in subsection 5,
16 every lien claimant, other than one who performs only labor, who
17 claims the benefit of NRS 108.221 to 108.246, inclusive, *and*
18 *sections 2 to 11, inclusive, of this act* shall, at any time after the
19 first delivery of material or performance of work or services under a
20 contract, deliver in person or by certified mail to the owner of the
21 property a notice of right to lien in substantially the following form:
22

23 NOTICE OF RIGHT TO LIEN

24 To:
25 (Owner's name and address)
26

27 The undersigned notifies you that he or she has supplied
28 materials or equipment or performed work or services as follows:
29

30
31 (General description of materials, equipment, work or services)
32 for improvement of property identified as (property description or
33 street address) under contract with (general contractor or
34 subcontractor). This is not a notice that the undersigned has not been
35 or does not expect to be paid, but a notice required by law that the
36 undersigned may, at a future date, record a notice of lien as provided
37 by law against the property if the undersigned is not paid.
38

39
40 (Claimant)
41

42 A subcontractor or ~~equipment or material~~ supplier who gives such
43 a notice must also deliver in person or send by certified mail a copy
44 of the notice to the prime contractor for information only. The
45 failure by a subcontractor to deliver the notice to the prime



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1 contractor is a ground for disciplinary proceedings against the
2 subcontractor under chapter 624 of NRS but does not invalidate the
3 notice to the owner.

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

7 3. No lien for materials or equipment furnished or for work or
8 services performed, except labor, may be perfected or enforced
9 pursuant to NRS 108.221 to 108.246, inclusive, *and sections 2 to*
10 *11, inclusive, of this act* unless the notice has been given.

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

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

15 6. A lien claimant who is required by this section to give a
16 notice of right to lien to an owner and who gives such a notice has a
17 right to lien for materials or equipment furnished or for work or
18 services performed in the 31 days before the date the notice of right
19 to lien is given and for the materials or equipment furnished or for
20 work or services performed anytime thereafter until the completion
21 of the work of improvement.

22 **Sec. 16.** NRS 108.2453 is hereby amended to read as follows:

23 108.2453 1. Except as otherwise provided in NRS 108.221 to
24 108.246, inclusive, *and sections 2 to 11, inclusive, of this act*, a
25 person may not waive or modify a right, obligation or liability set
26 forth in the provisions of NRS 108.221 to 108.246, inclusive ~~§~~ ,
27 *and sections 2 to 11, inclusive, of this act*.

28 2. A condition, stipulation or provision in a contract or other
29 agreement for the improvement of property or for the construction,
30 alteration or repair of a work of improvement in this State that
31 attempts to do any of the following is contrary to public policy and
32 is void and unenforceable:

33 (a) Require a lien claimant to waive rights provided by law to
34 lien claimants or to limit the rights provided to lien claimants, other
35 than as expressly provided in NRS 108.221 to 108.246, inclusive ~~§~~ ,
36 *and sections 2 to 11, inclusive, of this act*;

37 (b) Relieve a person of an obligation or liability imposed by the
38 provisions of NRS 108.221 to 108.246, inclusive ~~§~~ , *and sections 2*
39 *to 11, inclusive, of this act*;

40 (c) Make the contract or other agreement subject to the laws of a
41 state other than this State;

42 (d) Require any litigation, arbitration or other process for
43 dispute resolution on disputes arising out of the contract or other
44 agreement to occur in a state other than this State; or



(e) Require a prime contractor or subcontractor to waive, release or extinguish a claim or right that the prime contractor or subcontractor may otherwise possess or acquire for delay, acceleration, disruption or impact damages or an extension of time for delays incurred, for any delay, acceleration, disruption or impact event which was unreasonable under the circumstances, not within the contemplation of the parties at the time the contract was entered into, or for which the prime contractor or subcontractor is not responsible.

Sec. 17. NRS 624.609 is hereby amended to read as follows:

624.609 1. Except as otherwise provided in subsections 2 and 4, **NRS 624.620** and subsection 4 of NRS 624.622, if an owner of real property enters into a written or oral agreement with a prime contractor for the performance of work or the provision of materials or equipment by the prime contractor, the owner must:

(a) Pay the prime contractor on or before the date a payment is due pursuant to a schedule for payments established in a written agreement; or

(b) If no such schedule is established or if the agreement is oral, pay the prime contractor within 21 days after the date the prime contractor submits a request for payment.

2. If an owner has complied with subsection 3 ~~and~~ **and, if applicable, sections 8 to 11, inclusive, of this act**, the owner may:

(a) Withhold from any payment to be made to the prime contractor:

(1) A retention amount that, if the owner is authorized to withhold a retention amount pursuant to the agreement, must not exceed 10 percent of the amount of the payment to be made ~~and must, if applicable, comply with sections 8 to 11, inclusive, of this act~~;

(2) An amount equal to the sum of the value of:

(I) Any work or labor that has not been performed or materials or equipment that has not been furnished for which payment is being sought, unless the agreement otherwise allows or requires such a payment to be made; and

(II) Costs and expenses reasonably necessary to correct or repair any work which is the subject of the request for payment and which is not materially in compliance with the agreement to the extent that such costs and expenses exceed 50 percent of the **total** retention amount withheld **or to be withheld** pursuant to ~~[subparagraph (1);]~~ **the agreement**; and

(3) The amount the owner has paid or is required to pay pursuant to an official notice from a state agency or employee benefit trust fund, for which the owner is or may reasonably be liable for the prime contractor or his or her lower-tiered



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1 subcontractors in accordance with chapter 608, 612, 616A to 616D,
2 inclusive, or 617 of NRS; and

3 (b) Require as a condition precedent to the payment of any
4 amount due, lien releases furnished by the prime contractor and his
5 or her lower-tiered subcontractors and suppliers in accordance with
6 the provisions of paragraphs (a) and (c) of subsection 5 of
7 NRS 108.2457.

8 3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of
9 subsection 2 or paragraph (b) of subsection 2, an owner intends to
10 withhold any amount from a payment to be made to a prime
11 contractor, the owner must give, on or before the date the payment
12 is due, a written notice to the prime contractor of any amount that
13 will be withheld. The written notice of withholding must:

14 (a) Identify the amount of the request for payment that will be
15 withheld from the prime contractor;

16 (b) Give a reasonably detailed explanation of the condition or
17 the reason the owner will withhold that amount, including, without
18 limitation, a specific reference to the provision or section of the
19 agreement, and any documents relating thereto, and the applicable
20 building code, law or regulation with which the prime contractor has
21 failed to comply; and

22 (c) Be signed by an authorized agent of the owner.

23 4. A prime contractor who receives a notice of withholding
24 pursuant to subsection 3 or a notice of objection pursuant to
25 subparagraph (2) of paragraph (b) may:

26 (a) Give the owner a written notice and thereby dispute in good
27 faith and for reasonable cause the amount withheld, or the condition
28 or reason for the withholding; or

29 (b) Correct any condition or reason for the withholding
30 described in the notice of withholding and thereafter provide written
31 notice to the owner of the correction of the condition or reason for
32 the withholding. The notice of correction must be sufficient to
33 identify the scope and manner of the correction of the condition or
34 reason for the withholding and be signed by an authorized
35 representative of the prime contractor. If an owner receives a written
36 notice from the prime contractor of the correction of a condition or
37 reason for the withholding pursuant to this paragraph, the owner
38 shall:

39 (1) Pay the amount withheld by the owner for that condition
40 or reason for the withholding on or before the date the next payment
41 is due the prime contractor; or

42 (2) Object to the scope and manner of the correction of the
43 condition or reason for the withholding, on or before the date the
44 next payment is due to the prime contractor, in a written statement
45 which sets forth the condition or reason for the objection and which



1 complies with subsection 3. If the owner objects to the scope and
2 manner of the correction of a condition or reason for the
3 withholding, the owner shall nevertheless pay to the prime
4 contractor, along with the payment to be made pursuant to the prime
5 contractor's next payment request, the amount withheld for the
6 correction of the condition or reason for the withholding to which
7 the owner no longer objects.

8 5. Except as otherwise allowed in subsections 2, 3 and 4, an
9 owner shall not withhold from a payment to be made to a prime
10 contractor more than the retention amount.

11 **Sec. 18.** NRS 624.620 is hereby amended to read as follows:

12 624.620 1. ~~[Except as otherwise provided in this section,]~~ *An*
13 *owner shall pay, or cause to be paid, to the prime contractor any*
14 *money remaining unpaid and attributable to a lower-tiered*
15 *subcontractor's work, materials or equipment, including, without*
16 *limitation, the lower-tiered subcontractor's ownership interest in*
17 *any retention amount provided for pursuant to section 8 of this*
18 *act, within 30 days after the date on which all the following have*
19 *been completed:*

20 (a) *The lower-tiered subcontractor completes the performance*
21 *of work or provision of materials or equipment;*

22 (b) *The lower-tiered subcontractor provides the prime*
23 *contractor and the owner with the information and documentation*
24 *reasonably required by the agreement; and*

25 (c) *The lower-tiered subcontractor's work has been inspected*
26 *and approved by the building inspector or other authority, if*
27 *applicable.*

28 2. *An owner shall pay, or cause to be paid, to the prime*
29 *contractor any money remaining unpaid for the construction of a*
30 *work of improvement ~~[is payable to the prime contractor]~~ ,*
31 *including, without limitation, the retention amount provided for*
32 *pursuant to section 8 of this act, within 30 days after:*

33 (a) *The date on which all the following have been completed:*

34 (1) *The prime contractor completes the performance of*
35 *work or provision of materials or equipment;*

36 (2) *The prime contractor provides the owner with the*
37 *information and documentation reasonably required by the*
38 *agreement; and*

39 (3) *The prime contractor's work has been inspected and*
40 *approved by the building inspector or other authority, if*
41 *applicable;*

42 (b) *Occupancy or use of the work of improvement by the owner*
43 *or by a person acting with the authority of the owner; or*



1 ~~[(b)]~~ (c) The availability of a work of improvement for its
2 intended use. The prime contractor must have provided to the
3 owner:

4 (1) A written notice of availability on or before the day on
5 which the prime contractor claims that the work of improvement
6 became available for use or occupancy; or

7 (2) A certificate of occupancy issued by the appropriate
8 building inspector or other authority ~~[-]~~

9 ~~— 2. If the owner has complied with subsection 3, the owner may:~~

10 ~~— (a) Withhold payment for the amount of:~~

11 ~~— (1) Any work or labor that has not been performed or~~
12 ~~materials or equipment that has not been furnished for which~~
13 ~~payment is sought;~~

14 ~~— (2) The costs and expenses reasonably necessary to correct or~~
15 ~~repair any work that is not materially in compliance with the~~
16 ~~agreement to the extent that such costs and expenses exceed 50~~
17 ~~percent of the amount of retention being withheld pursuant to the~~
18 ~~terms of the agreement; and~~

19 ~~— (3) Money the owner has paid or is required to pay pursuant~~
20 ~~to an official notice from a state agency, or employee benefit trust~~
21 ~~fund, for which the owner is liable for the prime contractor or his or~~
22 ~~her lower tiered subcontractors in accordance with chapter 608, 612,~~
23 ~~616A to 616D, inclusive, or 617 of NRS.~~

24 ~~— (b) Require, as a condition precedent to the payment of any~~
25 ~~unpaid amount under the agreement, that lien releases be furnished~~
26 ~~by the prime contractor and his or her lower tiered subcontractors~~
27 ~~and suppliers in accordance with the provisions of paragraphs (a)~~
28 ~~and (c) of subsection 5 of NRS 108.2457.~~

29 ~~— 3. If, pursuant to paragraph (a) of subsection 2, an owner~~
30 ~~intends to withhold any amount from a payment to be made to a~~
31 ~~prime contractor, the owner must, on or before the date the payment~~
32 ~~is due, give written notice to the prime contractor of any amount that~~
33 ~~will be withheld. The written notice of withholding must:~~

34 ~~— (a) Identify the amount that will be withheld from the prime~~
35 ~~contractor;~~

36 ~~— (b) Give a reasonably detailed explanation of the condition for~~
37 ~~which or the reason the owner will withhold that amount, including,~~
38 ~~without limitation, a specific reference to the provision or section of~~
39 ~~the agreement with the prime contractor, and any documents~~
40 ~~relating thereto, and the applicable building code, law or regulation~~
41 ~~with which the prime contractor has failed to comply; and~~

42 ~~— (c) Be signed by an authorized agent of the owner.~~

43 ~~— 4. A prime contractor who receives a notice of withholding~~
44 ~~pursuant to subsection 3 may correct any condition or reason for the~~
45 ~~withholding described in the notice of withholding and thereafter~~



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~~provide written notice to the owner of the correction of the condition or reason for the withholding. The notice of correction must be sufficient to identify the scope and manner of the correction of the condition or reason for the withholding and be signed by an authorized representative of the prime contractor. If an owner receives a written notice from the prime contractor of the correction of a condition or reason for the withholding described in an owner's notice of withholding pursuant to subsection 3, the owner must, within 10 days after receipt of such notice:~~

~~—(a) Pay the amount withheld by the owner for that condition or reason for the withholding; or~~

~~—(b) Object to the scope and manner of the correction of the condition or reason for the withholding in a written statement that sets forth the reason for the objection and complies with subsection 3. If the owner objects to the scope and manner of the correction of a condition or reason for the withholding, the owner shall nevertheless pay to the prime contractor, along with the payment to be made pursuant to the prime contractor's next payment request, the amount withheld for the correction of the condition or reason for the withholding to which the owner no longer objects.~~

~~—5.]~~,

↪ *whichever occurs earlier.*

3. The partial occupancy or availability of a **[building] work of improvement** requires payment in direct proportion to the value of the part of the **[building] work of improvement** which is partially occupied or partially available. For works of improvement which involve more than one building, each building must be considered separately in determining the amount of money which is payable to the prime contractor.

Sec. 19. NRS 624.624 is hereby amended to read as follows:

624.624 1. Except as otherwise provided in this section, if a higher-tiered contractor enters into:

(a) A written agreement with a lower-tiered subcontractor that includes a schedule for payments, the higher-tiered contractor shall pay the lower-tiered subcontractor:

(1) On or before the date payment is due; or

(2) Within 10 days after the date the higher-tiered contractor receives payment for all or a portion of the work, materials or equipment described in a request for payment submitted by the lower-tiered subcontractor,

↪ *whichever is earlier.*

(b) A written agreement with a lower-tiered subcontractor that does not contain a schedule for payments, or an agreement that is oral, the higher-tiered contractor shall pay the lower-tiered subcontractor:



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(1) Within 30 days after the date the lower-tiered subcontractor submits a request for payment; or

(2) Within 10 days after the date the higher-tiered contractor receives payment for all or a portion of the work, labor, materials, equipment or services described in a request for payment submitted by the lower-tiered subcontractor,

↳ whichever is earlier.

2. If a higher-tiered contractor has complied with subsection 3 ~~§~~ *and, if applicable, sections 8 to 11, inclusive, of this act*, the higher-tiered contractor may:

(a) Withhold from any payment owed to the lower-tiered subcontractor:

(1) A retention amount that the higher-tiered contractor is authorized to withhold pursuant to the agreement, but the retention amount withheld must not exceed 10 percent of the payment that is required pursuant to subsection 1 ~~§~~ *and, if applicable, must comply with the provisions of sections 8 to 11, inclusive, of this act*;

(2) An amount equal to the sum of the value of:

(I) Any work or labor that has not been performed or materials or equipment that has not been furnished for which payment is being sought, unless the agreement otherwise allows or requires such a payment to be made; and

(II) Costs and expenses reasonably necessary to correct or repair any work which is the subject of the request for payment and which is not materially in compliance with the agreement to the extent that such costs and expenses exceed 50 percent of the retention amount withheld pursuant to subparagraph (1); and

(3) The amount the owner or higher-tiered contractor has paid or is required to pay pursuant to an official notice from a state agency or employee benefit trust fund, for which the owner or higher-tiered contractor is or may reasonably be liable for the lower-tiered subcontractor or his or her lower-tiered subcontractors in accordance with chapter 608, 612, 616A to 616D, inclusive, or 617 of NRS; and

(b) Require as a condition precedent to the payment of any amount due, lien releases furnished by the lower-tiered subcontractor and his or her lower-tiered subcontractors and suppliers in accordance with the provisions of paragraphs (a) and (c) of subsection 5 of NRS 108.2457.

3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of subsection 2 or paragraph (b) of subsection 2, a higher-tiered contractor intends to withhold any amount from a payment to be made to a lower-tiered subcontractor, the higher-tiered contractor must give, on or before the date the payment is due, a written notice



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1 to the lower-tiered subcontractor of any amount that will be
2 withheld and give a copy of such notice to all reputed higher-tiered
3 contractors and the owner. The written notice of withholding must:

4 (a) Identify the amount of the request for payment that will be
5 withheld from the lower-tiered subcontractor;

6 (b) Give a reasonably detailed explanation of the condition or
7 the reason the higher-tiered contractor will withhold that amount,
8 including, without limitation, a specific reference to the provision or
9 section of the agreement with the lower-tiered subcontractor, and
10 any documents relating thereto, and the applicable building code,
11 law or regulation with which the lower-tiered subcontractor has
12 failed to comply; and

13 (c) Be signed by an authorized agent of the higher-tiered
14 contractor.

15 4. A lower-tiered subcontractor who receives a notice of
16 withholding pursuant to subsection 3 or a notice of objection
17 pursuant to subparagraph (2) of paragraph (b) may:

18 (a) Give the higher-tiered contractor a written notice and thereby
19 dispute in good faith and for reasonable cause the amount withheld
20 or the conditions or reasons for the withholding; or

21 (b) Correct any condition or reason for the withholding
22 described in the notice of withholding and thereafter provide written
23 notice to the higher-tiered contractor of the correction of the
24 condition or reason for the withholding. The notice of correction
25 must be sufficient to identify the scope and manner of the correction
26 of the condition or reason for the withholding and be signed by an
27 authorized representative of the lower-tiered subcontractor. If a
28 higher-tiered contractor receives a written notice from the lower-
29 tiered subcontractor of the correction of a condition or reason for the
30 withholding pursuant to this paragraph, the higher-tiered contractor
31 shall:

32 (1) Pay the amount withheld by the higher-tiered contractor
33 for that condition or reason for the withholding on or before the date
34 the next payment is due the lower-tiered subcontractor; or

35 (2) Object to the scope and manner of the correction of the
36 condition or reason for the withholding, on or before the date the
37 next payment is due to the lower-tiered subcontractor, in a written
38 statement which sets forth the condition or reason for the objection
39 and which complies with subsection 3. If the higher-tiered
40 contractor objects to the scope and manner of the correction of a
41 condition or reason for the withholding, the higher-tiered contractor
42 shall nevertheless pay to the lower-tiered subcontractor, along with
43 payment to be made pursuant to the lower-tiered subcontractor's
44 next payment request, the amount withheld for the correction of the



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conditions or reasons for the withholding to which the higher-tiered contractor no longer objects.

5. Except as otherwise allowed in subsections 2, 3 and 4, a higher-tiered contractor shall not withhold from a payment to be made to a lower-tiered subcontractor more than the retention amount.

Sec. 20. NRS 645.8795 is hereby amended to read as follows:

645.8795 1. Except as otherwise provided in subsection 2, a claim that is recorded pursuant to the provisions of NRS 645.8775 has priority over any other encumbrance, claim or lien, if the claim of the real estate broker is recorded before the encumbrance, claim or lien.

2. The provisions of subsection 1 do not apply to a lien recorded pursuant to the provisions of NRS 108.221 to 108.246, inclusive ~~[]~~, *and sections 2 to 11, inclusive, of this act.*

Sec. 21. NRS 645A.010 is hereby amended to read as follows:

645A.010 As used in this chapter, unless the context otherwise requires:

1. "Commissioner" means the Commissioner of Mortgage Lending.

2. "Division" means the Division of Mortgage Lending of the Department of Business and Industry.

3. "Escrow" means any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering or leasing of real or personal property to another person, *or for the purposes set forth in NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act*, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, *prime contractor, subcontractor, supplier, lien claimant* or any agent or employee of any of ~~[the latter-]~~ *those persons*. The term includes the collection of payments and the performance of related services by a third person in connection with a loan secured by a lien on real property. *As used in this subsection:*

(a) "Lien claimant" has the meaning ascribed to it in NRS 108.2214.

(b) "Prime contractor" has the meaning ascribed to it in NRS 108.22164.

(c) "Supplier" has the meaning ascribed to it in section 7 of this act.

4. "Escrow agency" means:

(a) Any person who employs one or more escrow agents; or



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(b) An escrow agent who administers escrows on his or her own behalf.

5. "Escrow agent" means any person engaged in the business of administering escrows for compensation.

Sec. 22. NRS 645A.015 is hereby amended to read as follows:

645A.015 ~~[The]~~ *1. Except as otherwise provided in subsection 2, the* provisions of this chapter do not apply to:

~~[1-]~~ (a) Any person:

~~[(a)]~~ (1) Doing business under the laws of this State or the United States relating to banks, mutual savings banks, trust companies, savings and loan associations, common and consumer finance companies or industrial loan companies; or

~~[(b)]~~ (2) Licensed pursuant to chapter 692A of NRS.

~~[2-]~~ (b) An attorney at law rendering services in the performance of his or her duties as attorney at law, except an attorney actively engaged in conducting an escrow agency.

~~[3-]~~ (c) Any firm or corporation which lends money on real or personal property and is subject to licensing, supervision or auditing by an agency of the United States or of this State.

~~[4-]~~ (d) Any person doing any act under order of any court.

2. The provisions of this chapter apply to any person engaged in the business of administering an escrow pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act.

