

Amendment No. 375

Assembly Amendment to Assembly Bill No. 412

(BDR 9-833)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

MSM/BJE



Date: 4/25/2011

A.B. No. 412—Revises various provisions governing mechanics' and materialmen's liens. (BDR 9-833)



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 and a verification of compliance 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 7.5 of this bill establishes certain limitations and requirements with respect to retention amounts, which are certain amounts withheld from payment to contractors and subcontractors until the work is completed or materials or equipment are furnished. 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)~~ Sections 7.5 and 9 of this bill establish requirements for the retention amounts ~~to~~ including making clear that retention amounts remain the separate property of the prime contractor and lower-tiered subcontractors from whom they are withheld.

Section ~~(10 of this bill)~~ 9 further 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 construction disbursement account which funds the account in an amount equal to the total cost of the work of improvement, ~~section ~~(10)~~ 9~~ requires the retention amount to be transferred from the

construction distribution account to the trust account. ~~Section 10.9 also provides that, under certain circumstances, for a rebuttable presumption that an owner, lessee (and contractor) or escrow agency 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, breached its fiduciary duties with respect to a retention amount if the owner, lessee or escrow agency uses the retention amount in violation of the provisions of this bill.~~

Section 10 of this bill provides the manner in which retention amounts are paid from an owner or lessee to a prime contractor, and from the prime contractor to his or her lower-tiered subcontractors. Section 10 also authorizes the stoppage of work on, or the termination of a contract for, the construction, alteration or repair of an improvement or work of improvement under certain circumstances. Section 10 additionally requires an owner, lessee or escrow agency to execute and have recorded a verification of compliance as to the disposition of retention amounts.

~~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 these 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.

Recently, the Nevada Supreme Court, discussing NRS 108.22112, 108.22184 and 108.225, held that: (1) pursuant to NRS 108.225, "commencement of construction," as defined in existing law, is required for lien priority; (2) the definition of "commencement of construction" plainly requires visibility of on-site work in order for a mechanic's lien to take a priority position over a deed of trust; (3) the visible work performed by a contractor who had provided numerous preconstruction services amounted to the placement of a business sign and the removal of power lines; and (4) such preparatory work performed did not constitute "commencement of construction" and, thus, the contractor's mechanic's lien was junior to a bank's deed of trust. (*J.E. Dunn Nw., Inc. v. Corus Constr. Venture, LLC*, 127 Nev. Adv. Op. 5 (Mar. 3, 2011)) Sections 5.5, 7.3, 7.4, 12.5 and 13.5 of this bill change the existing law upon which the conclusion of the Court in *Dunn* was based, making it such that the visibility of a much wider variety of activities and items is sufficient for a mechanic's lien to take a priority lien position.

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, firm or entity 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. 4.5. "Lessee" means a person, firm or entity which claims less than a fee simple estate in the property.

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.

Sec. 5.5. "Materials or equipment furnished" includes the delivery to, or the placement or installation of materials or equipment on or about, the property, including, without limitation, appliances, construction fencing, construction signage, construction or job-site trailers, machinery, substances, supplies, tools, vehicles and other similar materials or equipment, in connection with the construction, alteration or repair of any improvement, property or work of improvement.

Sec. 6. "Retention amount" means an amount or percentage of a contract or of the periodic payments to be made to a prime contractor or a lower-tiered subcontractor that an owner, lessee or prime contractor is authorized to withhold pursuant to the contract.

1. Pursuant to the contract;

2. In accordance with the provisions of section 7.5 of this act; and

3. If applicable, in accordance with the requirements of sections 8 to 11, inclusive, of this act. ~~[until the prime contractor or a lower-tiered subcontractor completes the performance of work or the provision of materials or equipment pursuant to the terms of the contract.]~~

Sec. 7. "Supplier" means a person who provides materials or equipment used, consumed or incorporated or to be used, consumed or incorporated in the improvement of property or the construction, alteration or repair of any improvement, property or work of improvement.

Sec. 7.3. "Work performed" includes the performance of any labor or work on or about the property, including, without limitation, clearing, demolition, excavating, grading, grubbing, filling, landscaping, shoring, staking, installing or connecting a temporary source of electricity, trenching and the installation of cellars, curbs, public utilities, sewers, sidewalks and vaults, and the performance of any labor or work in connection with the construction, alteration or repair of any improvement, property or work of improvement.

Sec. 7.4. For the purposes of the term "commencement of construction," set forth in NRS 108.22112, a lien, mortgage or other encumbrance holder who, pursuant to NRS 108.225, asserts priority over a lien provided for in NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act, has the burden of proof to establish that any work performed or materials or equipment furnished was not visible from a reasonable inspection of the property as of the date and time his or her lien, mortgage or other encumbrance attached to the property.

Sec. 7.5. Whether a retention amount is withheld pursuant to sections 8 to 11, inclusive, of this act, or otherwise:

1. The retention amount:

(a) Must not exceed 10 percent of:

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

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

(b) Is the separate property of the prime contractor or the lower-tiered subcontractors from whom it was withheld;

(c) Must be held in trust by an owner, lessee or escrow agency for the benefit of the prime contractor or the lower-tiered subcontractors from whom it was withheld; and

(d) Must be paid:

(1) By an owner, lessee or escrow agency to a prime contractor in the time and manner set forth in subsection 1 of NRS 624.620.

(2) By a higher-tiered contractor to a lower-tiered subcontractor in the time and manner set forth in subsection 1 of NRS 624.624.

2. The prime contractor and the prime contractor's lower-tiered subcontractors have an ownership interest in the retention amount equal to:

(a) The amount withheld from the prime contractor and each lower-tiered subcontractor; and

(b) The respective ownership interest of the prime contractor and each lower-tiered subcontractor in the retention amount withheld.

Sec. 8. 1. An owner, lessee, higher-tiered contractor, lower-tiered contractor and escrow agency shall comply with the requirements of ~~this section and~~ sections ~~9, 10 and~~ 8 to 11, inclusive, of this act if:

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

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

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

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

(a) Obtain the services of an escrow agency to hold a retention amount in trust ~~and~~ pursuant to section 9 of this act;

(b) Record a notice of establishment of a trust account with the county recorder of the county where the property is located upon which the improvement or work of improvement is or will be constructed, altered or repaired ~~and~~; and

(c) Before the issuance of any permit for the improvement or work of improvement, submit a conformed copy of the recorded notice of establishment of a trust account to the building inspector or other governmental authority having jurisdiction over the construction, alteration or repair of the improvement or work of improvement.

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

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

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

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

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

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

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

(h) Be in substantially the following form:

Title:.....

Subscribed and sworn to before me, a Notary Public, on this day of
the month of of the year

Notary Public County, Nevada

My appointment expires:

4. The notice of establishment of a trust account required pursuant to
subsection 2 must be signed and verified under oath and penalty of perjury, by
the owner or lessee or the owner or lessee's authorized representative [.]

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

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

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

~~— (1) The cost of all work, materials and equipment, including any~~
~~overhead the prime contractor and the lower-tiered subcontractors incurred and~~
~~profit the prime contractor and the lower-tiered subcontractors earned through~~
~~the date of termination;~~

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

~~— (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.] , that the~~
information contained therein is true and correct.

Sec. 9. 1. [A] In addition to the requirements set forth in section 7.5 of
this act, 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~~ that is withheld pursuant to sections 8 to 11, inclusive, of this act;

~~(a) Must be:~~

~~(1) 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)~~ (2) 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)~~ (3) 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)~~ (4) Kept separate from money belonging to the escrow agency ~~;~~

~~2. Upon being withheld, a retention amount is:~~

~~(b) 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 ~~;~~ and

~~(c) Is held by an owner, lessee or escrow agency in the capacity of a fiduciary.~~

2. Except as otherwise provided in subsection 3, 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 prime contractor's lower-tiered subcontractors, the owner or lessee shall cause the withheld amount to be deposited immediately in a trust account established pursuant to section 8 of this act.

3. If a construction disbursement account is established pursuant to subsection 1 of NRS 108.2403, the construction control shall immediately transfer the retention amount from the construction disbursement account to the trust account established pursuant to section 8 of this act when a progress payment is made from the construction disbursement account to the prime contractor and the prime contractor's lower-tiered subcontractors.

4. Use by an owner, lessee or escrow agency of a retention amount in violation of the provisions of sections 8 to 11, inclusive, of this act creates a rebuttable presumption, in any action brought by a prime contractor or the lower-tiered subcontractors from whom it was withheld and to whom it is owed, that the owner, lessee or escrow agency has breached its fiduciary duties with respect to the retention amount.

5. As used in this section, "fiduciary" has the meaning ascribed to it in NRS 162.020.

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

~~3. If a prime contractor or a lower-tiered subcontractor does not perform or complete the work required by a prime contract, the owner, lessee or higher-tiered contractor with whom the prime contractor or lower-tiered subcontractor~~

~~contracted has a claim against the prime contractor's or the lower-tiered subcontractor's ownership interest in the retention amount to the extent of any compensable damages authorized pursuant to the contract and established in court or in an arbitral proceeding.~~

~~4. An owner or lessee shall pay, or cause the escrow agency to pay, to the prime contractor [for the lower-tiered subcontractors, the] a retention amount as provided in subsection 1 of NRS 624.620 regardless of whether the retention amount has been deposited in a trust account.~~

~~5. Unless a shorter period for payment is provided in a contract entered into between a~~

~~2. A higher-tiered contractor [and] shall pay to a lower-tiered subcontractor [within 10 days after the higher-tiered contractor receives payment of] a retention amount [from an owner, lessee or escrow agency that includes any amount owed to the lower-tiered subcontractor for performance or provision of work, materials or equipment, the higher-tiered contractor shall pay the lower-tiered subcontractor that portion of the retention amount owed to the lower-tiered subcontractor.~~

~~6. An owner or lessee shall provide written proof to a building inspector or other authority] as provided in subsection 1 of NRS 624.624.~~

3. If an owner or lessee fails to satisfy the requirements of sections 8 to 11, inclusive, of this act, the prime contractor who has furnished or will furnish materials or equipment for the improvement or work of improvement may stop work after giving written notice to the owner or lessee. If the prime contractor stops work pursuant to this subsection, the prime contractor's lower-tiered subcontractors may stop work. If the owner or lessee:

(a) Satisfies the requirements of sections 8 to 11, inclusive, of this act within 25 days after a work stoppage, the prime contractor and the prime contractor's lower-tiered subcontractors who stopped work shall resume work, and the prime contractor and the lower-tiered subcontractors are entitled to compensation from the owner or lessee for any reasonable costs and expenses incurred because of the delay and remobilization.

(b) Does not satisfy the requirements of sections 8 to 11, inclusive, of this act within 25 days after a work stoppage, the prime contractor may terminate the contract relating to the improvement or work of improvement, and the prime contractor and the prime contractor's lower-tiered subcontractors are entitled to recover from the owner or lessee:

(1) The cost of all work performed or materials or equipment furnished, including, without limitation, any overhead the prime contractor and the lower-tiered subcontractors incurred, and any profit the prime contractor and the lower-tiered subcontractors earned, through the date of termination;

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

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

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

4. In addition to the interest, costs and attorney's fees to which the prime contractor and the prime contractor's lower-tiered subcontractors are entitled pursuant to subsection 3, the prime contractor and the lower-tiered subcontractors are entitled to recover from an owner or lessee who fails to comply with the requirements of sections 8 to 11, inclusive, of this act, the interest, costs and attorney's fees incurred by the prime contractor and the lower-tiered subcontractors in collecting the retention amount.

1 5. A building inspector or other governmental authority having jurisdiction
2 over the construction, alteration or repair of an improvement or work of
3 improvement shall not issue a certificate of occupancy for the improvement or
4 work of improvement until such time as the owner, lessee or escrow agency has:

5 (a) Caused a verification of compliance to be recorded with the county
6 recorder of the county where the property is located, whereby an authorized
7 representative of the owner, lessee or escrow agency certifies under oath and
8 subject to penalty of perjury that the entire retention amount which is the subject
9 of the prime contract has been:

10 ~~[(a) Held]~~

11 (1) Deposited and is being held in the trust [by an escrow agency and
12 deposited in a financial institution] account as required [pursuant to] by section 9
13 of this act;

14 ~~[(b) Deposited with the court in an action for interpleader brought pursuant~~
15 ~~to section 11 of this act; or~~

16 ~~[(c) Fully]~~

17 (2) Partially paid to the prime contractor and the lower-tiered
18 subcontractors to whom it is owed,

19 ~~[(as a condition precedent to the issuance of a certificate of occupancy or~~
20 ~~temporary certificate of occupancy for an improvement or work of improvement,~~
21 with the balance of the retention amount withheld being deposited and held in the
22 trust account as required by section 9 of this act; or

23 (3) Fully paid to the prime contractor and the lower-tiered
24 subcontractors to whom it is owed; and

25 (b) Provided a conformed copy of the recorded verification of compliance to
26 the building inspector or other governmental authority having jurisdiction over
27 the construction, alteration or repair of the improvement or work of
28 improvement.

29 6. The verification of compliance to be provided and recorded by an owner,
30 lessee or escrow agency pursuant to subsection 5 must:

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

32 (b) Describe the owner's or lessee's interest in:

33 (1) The property upon which the improvement or work of improvement
34 was constructed, altered or repaired; and

35 (2) The improvement or work of improvement constructed, altered or
36 repaired on such property;

37 (c) Identify the name of the improvement or work of improvement and the
38 address, legal description and assessor's parcel number of the property upon
39 which the improvement or work of improvement was constructed, altered or
40 repaired;

41 (d) Identify the name of the governmental authority having jurisdiction over
42 the construction, alteration or repair of the improvement or work of improvement
43 on the property;

44 (e) Identify the permit number, if any, for the improvement or work of
45 improvement that was constructed, altered or repaired on the property;

46 (f) Identify the name and address of the escrow agency;

47 (g) Include the date on which the owner or lessee obtained the services of the
48 escrow agency;

49 (h) Identify the trust account number, if any;

50 (i) State that the entire retention amount which has been withheld and is the
51 subject of the prime contract has been:

52 (1) Deposited and is being held in the trust account as required by
53 section 9 of this act;

(k) Be in substantially the following form:

I am authorized to sign this Verification of Compliance on behalf of the owner or lessee of, or escrow agency for, the above-identified improvement or work of improvement constructed, altered or repaired on the property. I have read the content of this Verification, and I know the contents hereof to be true and correct of my own personal knowledge.

On behalf of the undersigned, I hereby verify under penalty of perjury that the entire retention amount withheld from the prime contractor and the lower-tiered subcontractors over the course of the construction of the improvement or work of improvement identified above has been:

[] Deposited and is being held in the trust account identified above, as required by section 9 of this act;

OR

[] Partially paid to the prime contractor and the lower-tiered subcontractors to whom it is owed, with the balance of the retention amount withheld being deposited and held in the trust account as required by section 9 of this act;

OR

[] Fully paid to the prime contractor and the lower-tiered subcontractors to whom it is owed.

Dated this.....day of....., 20....

By:.....

Print name:.....

Company name:

Title:.....

Subscribed and sworn to before me, a Notary Public, on this day of the month of of the year

.....
Notary Public County, Nevada

My appointment expires:

7. The rights and remedies provided to a prime contractor and the prime contractor's lower-tiered subcontractors pursuant to sections 8 to 11, inclusive, of this act are in addition to any other rights and remedies that may exist at law or in equity, including, without limitation, a lien claimant's right to include a retention amount in the lienable amount of any notice of lien that the lien claimant may record or cause to be recorded pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act.

8. The duty of an owner, lessee or higher-tiered contractor to comply with the provisions of NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act is mandatory and may not be waived, modified or released by contract or otherwise.

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

~~2. The~~ An escrow agency shall keep detailed and complete records of all transactions with respect to ~~the~~ a trust account, including, without limitation,

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

~~10-7~~ 2. Within 5 days after an owner, lessee or escrow agency receives a request for an accounting of the trust account from a prime contractor or lower-tiered subcontractor, the owner, lessee or escrow agency shall comply with the request. The accounting must be in writing and must include the following information:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(6) Of whom the escrow agency is aware may perform work or furnish materials or equipment for the improvement or work of 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, and sections 2 to 7.3, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 12.5. NRS 108.22112 is hereby amended to read as follows:

108.22112 "Commencement of construction" means the date on which ~~it~~

~~1. Work~~ any work performed ~~by~~ or

~~[2. Materials]~~ materials or equipment furnished in connection with a work of improvement ~~that is subject to a lien pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act~~ is visible from a reasonable inspection of the ~~site~~ property.

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

108.22132 "Lien" means the statutory rights and security or ownership interest in ~~it~~:

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

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

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

~~4. 3. Property~~ or any improvements thereon provided to a lien claimant by NRS 108.221 to 108.246, inclusive ~~;~~, and sections 2 to 11, inclusive, of this act.

Sec. 13.5. NRS 108.22188 is hereby amended to read as follows:

108.22188 "Work of improvement" means the entire structure or scheme of improvement as a whole, including, without limitation, all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon, whether under multiple prime contracts or a single prime contract except as follows:

1. If a scheme of improvement consists of the construction of two or more separate buildings and each building is constructed upon a separate legal parcel of land and pursuant to a separate prime contract for only that building, then each building shall be deemed a separate work of improvement; and

2. If the improvement of the site is provided for in a prime contract that is separate from all prime contracts for the construction of one or more buildings on the property, and if the improvement of the site ~~[was contemplated by the contracts to be a separate work of improvement to be completed before the commencement of]~~ is unrelated to the construction of the buildings, the improvement of the site shall be deemed a separate work of improvement from the construction of the ~~[buildings and the commencement of construction of the improvement of the site does not constitute the commencement of construction of the]~~ buildings. As used in this subsection, "improvement of the site" ~~[means the development or enhancement of the property, preparatory to the commencement of construction of a building, and]~~ includes:

- (a) The demolition or removal of improvements, trees or other vegetation;
- (b) The drilling of test holes;
- (c) Grading, grubbing, filling or excavating;
- (d) Constructing or installing sewers or other public utilities; or
- (e) Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

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 ~~;~~ ~~[for 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 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 the owner's agent.

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

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

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

NOTICE OF RIGHT TO LIEN

To:
(Owner's name and address)

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

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

.....
(Claimant)

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

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

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

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

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

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

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

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

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

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

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

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

(d) Require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other 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. 16.1. NRS 162.020 is hereby amended to read as follows:

162.020 1. In NRS 162.010 to 162.140, inclusive, unless the context of subject matter otherwise requires:

(a) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

(b) "Fiduciary" includes ~~§~~;

(1) A trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, or public officer, ~~§ or any~~;

(2) An owner or lessee who holds a retention amount, or an escrow agency that administers an escrow, pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act; and

(3) Any other person acting in a fiduciary capacity for any person, trust or estate.

(c) "Principal" includes any person to whom a fiduciary as such owes an obligation.

2. A thing is done "in good faith" within the meaning of NRS 162.010 to 162.140, inclusive, when it is in fact done honestly, whether it is done negligently or not.

Sec. 16.3. Chapter 624 of NRS is hereby amended by adding thereto a new section to read as follows:

"Retention amount" has the meaning ascribed to it in section 6 of this act.

Sec. 16.7. NRS 624.606 is hereby amended to read as follows:

624.606 As used in NRS 624.606 to 624.630, inclusive, and section 16.3 of this act, unless the context otherwise requires, the words and terms defined in NRS 624.607 to 624.6086, inclusive, and section 16.3 of this act have the meanings ascribed to them in those sections.

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, 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) ~~Except as otherwise provided in this subparagraph, a~~ retention amount that ~~the owner is authorized to withhold~~ ~~the 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.~~ ~~With respect to any retention amount described in this subparagraph:~~

(I) The owner must pay the retention amount to the prime contractor in the time and manner required by NRS 624.620; and

(II) If applicable, the withholding of the retention amount must comply with the requirements 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 ~~total~~ retention amount withheld ~~for 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 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 prime contractor 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, an owner intends to withhold any amount from a payment to be made to a prime contractor, the owner must give, on or before the date the payment is due, a written notice to the prime contractor of any amount that will be withheld. The written notice of withholding must:

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

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

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

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

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

(b) Correct any condition or reason for the withholding described in the notice of withholding and thereafter 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 pursuant to this paragraph, the owner shall:

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

(2) Object to the scope and manner of the correction of the condition or reason for the withholding, on or before the date the next payment is due to the prime contractor, in a written statement which sets forth the condition or reason for the objection and which 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. Except as otherwise allowed in subsections 2, 3 and 4, an owner shall not withhold from a payment to be made to a prime contractor more than the retention amount.

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

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

~~(a) The lower tiered subcontractor completes the performance of work or provision of materials or equipment;~~

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

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

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

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

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

~~(2) The prime contractor provides the owner with the information and documentation reasonably required by the agreement; and~~

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

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

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

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

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

~~whichever of paragraph (a), (b) or (c) occurs earlier.~~

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

~~(a) Withhold from the payment ~~[for the amount of:]~~ to be made to the prime contractor pursuant to subsection 1:~~

~~(1) ~~[Any]~~ The reasonable amount of any work or labor that has not been performed or materials or equipment that has not been furnished for which payment is sought;~~

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

~~(3) Money 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 liable for the prime contractor or his or her lower-tiered subcontractors in accordance with chapter 608, 612, 616A to 616D, inclusive, or 617 of NRS.~~

~~(b) Require, as a condition precedent to the payment of any unpaid amount under the agreement, that lien releases be furnished by the prime contractor 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 paragraph (a) of subsection 2, an owner intends to withhold ~~[any]~~ an amount from a payment to be made to a prime contractor ~~[.]~~ pursuant to subsection 1, the owner must, on or before the date the payment is due, give written notice to the prime contractor of ~~[any]~~ the amount that will be withheld. The written notice of withholding must:~~

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

~~(b) Give a reasonably detailed explanation of the condition for which or the reason the owner will withhold that amount, including, without limitation, a specific reference to the provision or section of the agreement with the prime~~

contractor, and any documents relating thereto, and the applicable building code, law or regulation with which the prime contractor has failed to comply; and

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

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

~~which ever occurs earlier~~

~~3.1~~ 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.

6. An owner, lessee or escrow agency shall not withhold from the payment to be made to a prime contractor pursuant to subsection 1 more than the amounts allowed in paragraph (a) of subsection 2 and paragraph (a) of subsection 4, and any withholding must:

(a) Be limited to those reasons for withholding allowed in paragraph (a) of subsection 2 and subsection 4; and

(b) Only be allowed if the owner, lessee or escrow agency has complied with subsection 3.

7. As used in this section:

(a) "Escrow agency" has the meaning ascribed to it in section 3 of this act.

(b) "Lessee" has the meaning ascribed to it in section 4.5 of this act.

(c) "Work of improvement" has the meaning ascribed to it in NRS 108.22188.

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,

1       ↪ whichever is earlier.

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

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

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

10      ↪ whichever is earlier.

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

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

15      (1) ~~Except as otherwise provided in this subparagraph, a~~ retention  
16      amount that the higher-tiered contractor is authorized to withhold pursuant to ~~the~~  
17      ~~agreement, but the retention amount withheld must not exceed 10 percent of the~~  
18      ~~payment that is required pursuant to subsection 1~~ ~~and, if applicable, must~~  
19      ~~comply with the provisions of sections 8 to 11, inclusive, of this act,~~ section 7.5  
20      of this act. With respect to any retention amount described in this subparagraph:

21      (I) The higher-tiered contractor must pay the retention amount to the  
22      lower-tiered subcontractor in the time and manner required by subsection 1; and

23      (II) If applicable, the withholding of the retention amount must  
24      comply with the requirements of sections 8 to 11, inclusive, of this act.

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

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

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

33      (3) The amount the owner or higher-tiered contractor has paid or is  
34      required to pay pursuant to an official notice from a state agency or employee  
35      benefit trust fund, for which the owner or higher-tiered contractor is or may  
36      reasonably be liable for the lower-tiered subcontractor or his or her lower-tiered  
37      subcontractors in accordance with chapter 608, 612, 616A to 616D, inclusive, or  
38      617 of NRS. ~~and~~

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

43      3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of subsection 2 or  
44      paragraph (b) of subsection 2, a higher-tiered contractor intends to withhold any  
45      amount from a payment to be made to a lower-tiered subcontractor, the higher-  
46      tiered contractor must give, on or before the date the payment is due, a written  
47      notice to the lower-tiered subcontractor of any amount that will be withheld and  
48      give a copy of such notice to all reputed higher-tiered contractors and the owner.  
49      The written notice of withholding must:

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

52      (b) Give a reasonably detailed explanation of the condition or the reason the  
53      higher-tiered contractor will withhold that amount, including, without limitation, a

specific reference to the provision or section of the agreement with the lower-tiered subcontractor, and any documents relating thereto, and the applicable building code, law or regulation with which the lower-tiered subcontractor has failed to comply; and

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

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

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

(b) Correct any condition or reason for the withholding described in the notice of withholding and thereafter provide written notice to the higher-tiered contractor 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 lower-tiered subcontractor. If a higher-tiered contractor receives a written notice from the lower-tiered subcontractor of the correction of a condition or reason for the withholding pursuant to this paragraph, the higher-tiered contractor shall:

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

(2) Object to the scope and manner of the correction of the condition or reason for the withholding, on or before the date the next payment is due to the lower-tiered subcontractor, in a written statement which sets forth the condition or reason for the objection and which complies with subsection 3. If the higher-tiered contractor objects to the scope and manner of the correction of a condition or reason for the withholding, the higher-tiered contractor shall nevertheless pay to the lower-tiered subcontractor, along with payment to be made pursuant to the lower-tiered subcontractor's next payment request, the amount withheld for the correction of the 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. 19.5. Chapter 627 of NRS is hereby amended by adding thereto a new section to read as follows:**

**1. Any person, firm or entity who acts in the capacity of a construction control and who undertakes to hold or disburse construction funds in payment of work, labor or materials, including, without limitation, a retention amount:**

**(a) Is acting in the capacity of an escrow agency pursuant to chapter 645A of NRS;**

**(b) Is acting in the capacity of a fiduciary pursuant to chapter 669 of NRS; and**

**(c) Shall, if applicable, comply with the requirements of sections 8 to 11, inclusive, of this act.**

**2. As used in this section:**

**(a) "Escrow agency" has the meaning ascribed to it in NRS 645A.010.**

**(b) "Fiduciary" has the meaning ascribed to it in NRS 669.045.**

**(c) "Retention amount" has the meaning ascribed to it in section 6 of this act.**



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

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

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

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

10       645A.010 As used in this chapter, unless the context otherwise requires:

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

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

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

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

27       (b) "Lower-tiered subcontractor" has the meaning ascribed to it in section 5  
28 *of this act.*

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

30       ~~(e)~~ (d) "Supplier" has the meaning ascribed to it in section 7 of this act.

31       4. "Escrow agency" means:

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

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

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

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

37       645A.015 ~~[The]~~ 1. *Except as otherwise provided in subsection 2, the*  
38 *provisions of this chapter do not apply to:*

39       ~~[1.]~~ (a) Any person:

40       ~~[1(a)]~~ (1) Doing business under the laws of this State or the United States  
41 relating to banks, mutual savings banks, trust companies, savings and loan  
42 associations, common and consumer finance companies or industrial loan  
43 companies; or

44       ~~[1(b)]~~ (2) Licensed pursuant to chapter 692A of NRS.

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

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

51       ~~[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.*

Sec. 22.2. Chapter 662 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The proceeds of any loan, mortgage or other pledge of money to be used to pay for the construction, alteration or repair of a work of improvement must be used to satisfy and pay the prime contractor and the prime contractor's lower-tiered subcontractors for the work, materials or equipment they have furnished or may furnish for the construction, alteration or repair of the work of improvement.

2. Use by a bank of such proceeds in violation of this section creates a rebuttable presumption, in any action brought by a prime contractor or the lower-tiered subcontractors to whom such money is owed, that the bank has breached its fiduciary duties with respect to such proceeds.

3. As used in this section:

(a) "Lower-tiered subcontractor" has the meaning ascribed to it in section 5 of this act.

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

(c) "Work of improvement" has the meaning ascribed to it in NRS 108.22188.

Sec. 22.3. NRS 662.231 is hereby amended to read as follows:

662.231 As used in NRS 662.231 to 662.245, inclusive, and section 22.2 of this act, "business of a trust company" or "trust company business" has the meaning ascribed to it in NRS 669.029.

Sec. 22.4. NRS 662.235 is hereby amended to read as follows:

662.235 1. Any bank organized under this title may state in its articles of incorporation that it will carry on a trust company business in connection with the banking business, and in addition to the powers conferred upon banks may:

(a) Act as trustee under any mortgage or bond of any person, firm or corporation, or of any municipality or body politic.

(b) Accept and execute any municipal, corporate or individual trust not inconsistent with the laws of this State.

(c) Act under the order or appointment of any court as guardian, commissioner, receiver or trustee.

(d) Act as executor or trustee under any will.

(e) Act as fiscal or transfer agent of any state, municipality, body politic or corporation, and in a capacity to receive and disburse money and register, transfer and countersign certificates of stock, bonds and other evidences of indebtedness.

(f) Act as local or registered agent of foreign corporations.

2. Any such bank holding any asset as a fiduciary shall:

(a) Segregate all such assets from any other assets of the bank and from the assets of any other trust, except as may be expressly provided otherwise by law or by the writing creating the trust.

(b) Record such assets in a separate set of books maintained for fiduciary activities.

3. Any bank organized under this title that undertakes to hold or secure a retention amount as that term is defined in section 6 of this act:

(a) Is acting in the capacity of a fiduciary and shall comply with the provisions of subsection 2;

(b) Is acting in the capacity of an escrow agency pursuant to chapter 645A of NRS; and

(c) Shall, if applicable, comply with the requirements of sections 8 to 11, inclusive, of this act.

Sec. 22.6. NRS 669.045 is hereby amended to read as follows:

669.045 1. “Fiduciary” means ~~the~~ :

(a) A trustee, executor, administrator, guardian of an estate, personal representative, conservator, assignee for the benefit of creditors, receiver, depository or person that receives on deposit money or property from a public administrator under any provision of this chapter or from another fiduciary, ~~the~~; or

(b) An owner or lessee who holds a retention amount, or an escrow agency that administers an escrow, pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 to 11, inclusive, of this act.

2. As used in this section, “administrator” includes servicers or administrators of individual retirement accounts within the meaning of section 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a), where the servicer or administrator holds itself out to the public for performance of such services and holds or maintains an ownership interest in the servicing rights of such accounts, or possesses or controls any of the assets of such accounts, including cash.

Sec. 22.8. NRS 669.080 is hereby amended to read as follows:

669.080 1. ~~the~~ Except as otherwise provided in subsection 3, this chapter does not apply to a person who:

(a) Does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies, but if the trust company business conducted in this State is not subject to supervision by a regulatory authority of another jurisdiction, the person must be licensed pursuant to this chapter before engaging in such business in this State;

(b) Is appointed as a fiduciary pursuant to NRS 662.245;

(c) Is acting in the performance of his or her duties as an attorney at law;

(d) Acts as a trustee under a deed of trust;

(e) Acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;

(f) Acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he or she is not regularly engaged in the business of acting as a trustee for such trusts;

(g) Engages in the business of a collection agency pursuant to chapter 649 of NRS;

(h) Engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 645A or 692A of NRS;

(i) Acts as a trustee of a trust created for charitable or nonprofit purposes if he or she is not regularly engaged in the business of acting as trustee for such trusts;

(j) Receives money or other property as a real estate broker licensed under chapter 645 of NRS on behalf of a principal;

(k) Engages in transactions as a broker-dealer or sales representative pursuant to chapter 90 of NRS;

(l) Acts as a fiduciary under a court trust;

(m) Does business as an insurer authorized to issue policies of life insurance and annuities or endowment contracts in this State and is subject to regulation and control of the Commissioner of Insurance;

(n) Acts as a fiduciary as an individual;

(o) Acts as a family trust company, unless the family trust company is licensed under this chapter. A family trust company which is not licensed under the provisions of this chapter shall be deemed not to be engaged in trust company business for the purposes of this chapter; or

(p) Except as otherwise provided in chapter 669A of NRS, is a family trust company, as defined in NRS 669A.080.

2. A bank, savings bank, savings and loan association or thrift company claiming an exemption from this chapter pursuant to paragraph (a) of subsection 1 must notify the Commissioner of Financial Institutions of its intention to engage in the business of a trust company in this State and present proof satisfactory to the Commissioner of Financial Institutions that its fiduciary activities in this State will be subject to regulation by another jurisdiction.

3. The provisions of this chapter apply to an owner or lessee who holds a retention amount, or a person, firm or entity that administers an escrow, pursuant to sections 8 to 11, inclusive, of this act. As used in this subsection:

(a) "Lessee" has the meaning ascribed to it in section 4.5 of this act.

(b) "Owner" has the meaning ascribed to it in NRS 108.22148.

(c) "Retention amount" has the meaning ascribed to it in section 6 of this act.

Sec. 23. 1. This section and sections 1, 5.5, 7.3, 7.4, 12.5 and 13.5 of this act become effective upon passage and approval.

2. Sections 2 to 5, inclusive, 6, 7, 7.5 to 12, inclusive, 13 and 14 to 22.8, inclusive, of this act become effective on July 1, 2011.