

SENATE BILL NO. 251—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 15, 2013

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises various provisions governing contracts for the performance of any kind of labor and for work, material or equipment for the construction, alteration or repair of property or improvements to property. (BDR 9-74)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 contracts; 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; expanding the scope of provisions concerning the liability of an original contractor for the indebtedness for labor incurred by a subcontractor; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Under existing law, contractors and subcontractors who provide work, material
- 2 or equipment for the construction, alteration or repair of property or improvements
- 3 to property have a lien against the property, improvements and certain
- 4 disbursement accounts for a certain amount related to that work, material or
- 5 equipment. (NRS 108.222) **Section 12** of this bill establishes certain limitations and
- 6 requirements with respect to retention amounts, which are certain amounts withheld
- 7 from payment to contractors and subcontractors until the work is completed or
- 8 materials or equipment are furnished. **Section 13** of this bill requires certain owners



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9 and lessees for certain contracts for construction to establish trust accounts for
10 retention amounts. Specifically, **section 13** requires those owners and lessees to
11 obtain the services of an escrow agency and record a notice of establishment of a
12 trust account if: (1) the total price or estimated budget of the contract is \$1,000,000
13 or more; and (2) the owner or lessee is authorized by the contract to withhold a
14 retention amount. **Sections 12 and 14** of this bill establish requirements for the
15 retention amounts, including making clear that retention amounts remain the
16 separate property of the prime contractor and lower-tiered subcontractors from
17 whom they are withheld.

18 **Section 14** further requires, with certain exceptions, an owner or lessee who
19 withholds a retention amount to immediately cause the withheld amount to be
20 deposited in a trust account. If the lessee, pursuant to existing law, establishes a
21 construction disbursement account which funds the account in an amount equal to
22 the total cost of the work of improvement, **section 14** requires the retention amount
23 to be transferred from the construction distribution account to the trust account.
24 **Section 14** also provides for a rebuttable presumption that an owner, lessee or
25 escrow agency has breached its fiduciary duties with respect to a retention amount
26 if the owner, lessee or escrow agency uses the retention amount in violation of the
27 provisions of this bill.

28 **Section 15** of this bill provides the manner in which retention amounts are paid
29 from an owner or lessee to a prime contractor, and from the prime contractor to his
30 or her lower-tiered subcontractors. **Section 15** also authorizes the stoppage of work
31 on, or the termination of a contract for, the construction, alteration or repair of an
32 improvement or work of improvement under certain circumstances. **Section 15**
33 additionally requires an owner, lessee or escrow agency to execute and have
34 recorded a verification of compliance as to the disposition of retention amounts.

35 **Section 16** of this bill establishes the requirements for administering such trust
36 accounts, including, without limitation, the requirements for keeping records and
37 the procedures for an accounting of such trust accounts.

38 **Section 21** of this bill provides, with certain exceptions, that contractors or
39 subcontractors who provide work, material or equipment for the construction,
40 alteration or repair of property or improvements to property have a lien against such
41 retention amounts in addition to having a lien against the property and
42 improvements and any construction disbursement account that has been
43 established.

44 Under existing law, certain persons, including, without limitation, certain
45 financial institutions, attorneys rendering services in the performance of their duties
46 as attorneys, and any person doing any act under order of any court, are exempt
47 from the provisions governing escrow agencies and agents. (NRS 645A.015)
48 **Section 34** of this bill provides that those persons are not exempt from the
49 provisions governing escrow agencies and agents if they are administering certain
50 trust accounts established for retention amounts.

51 Recently, in discussing NRS 108.22112, 108.22184 and 108.225, the Nevada
52 Supreme Court held that: (1) pursuant to NRS 108.225, "commencement of
53 construction," as defined in existing law, is required for lien priority; (2) the
54 definition of "commencement of construction" plainly requires visibility of on-site
55 work in order for a mechanic's lien to take a priority position over a deed of trust;
56 (3) the visible work performed by a contractor who had provided numerous
57 preconstruction services amounted to the placement of a business sign and the
58 removal of power lines; and (4) such preparatory work performed did not constitute
59 "commencement of construction" and therefore the contractor's mechanic's lien
60 was junior to a bank's deed of trust. (*J.E. Dunn Nw., Inc. v. Corus Constr. Venture,*
61 *LLC*, 127 Nev. Adv. Op. 5, 249 P.3d 501 (2011)) **Sections 7, 10, 11, 18 and 20** of
62 this bill change the existing law upon which the holding 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.

Under existing law, an original contractor who contracts with a subcontractor or another contractor for the erection, construction, alteration or repair of any building or structure is liable for the indebtedness for labor incurred by the subcontractor or contractor in performing under the contract. (NRS 608.150) **Section 25** of this bill extends this liability beyond construction contracts to apply to any contract that involves the performance of any kind of labor, including personal service. Existing law, as interpreted by the Nevada Supreme Court, establishes a private right of action to bring civil proceedings against an original contractor for the indebtedness for labor incurred, but not paid, by the subcontractor. (NRS 608.150; *U.S. Design & Constr. Corp. v. Int'l Bhd. of Elec. Workers*, 118 Nev. 458, 462 (2002)) The Nevada Supreme Court has also determined that the indebtedness for labor that can be recovered in such a civil proceeding includes any payment required under a collective bargaining agreement. (NRS 608.150; *Tobler and Oliver v. Board of Trustees*, 84 Nev. 438, 443 (1968)) **Section 25** codifies the holdings of *U.S. Design and Tobler* and extends them to apply to all contracts that require the performance of any kind of labor, including personal service.

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

Sec. 6. *"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. 7. *"Materials or equipment furnished" includes the delivery to, or the placement or installation of materials or equipment on or about, a property, including, without limitation,*



1 *appliances, construction fencing, construction signage,*
2 *construction or job-site trailers, machinery, substances, supplies,*
3 *tools, vehicles and other similar materials or equipment, in*
4 *connection with the construction, alteration or repair of any*
5 *improvement, property or work of improvement.*

6 **Sec. 8.** *"Retention amount" means an amount or percentage*
7 *of a contract or of the periodic payments to be made to a prime*
8 *contractor or a lower-tiered subcontractor that an owner, lessee or*
9 *prime contractor is authorized to withhold:*

10 1. *Pursuant to the contract;*

11 2. *In accordance with the provisions of section 12 of this act;*
12 *and*

13 3. *If applicable, in accordance with the requirements of*
14 *sections 13 to 16, inclusive, of this act.*

15 **Sec. 9.** *"Supplier" means a person who provides materials or*
16 *equipment used, consumed or incorporated or to be used,*
17 *consumed or incorporated in the improvement of property or the*
18 *construction, alteration or repair of any improvement, property or*
19 *work of improvement.*

20 **Sec. 10.** *"Work performed" includes the performance of any*
21 *labor or work on or about the property, including, without*
22 *limitation, clearing, demolition, excavating, grading, grubbing,*
23 *filling, landscaping, shoring, staking, installing or connecting a*
24 *temporary source of electricity, trenching and installing cellars,*
25 *curbs, public utilities, sewers, sidewalks and vaults, and the*
26 *performance of any labor or work in connection with the*
27 *construction, alteration or repair of any improvement, property or*
28 *work of improvement.*

29 **Sec. 11.** *For the purposes of the term "commencement of*
30 *construction," set forth in NRS 108.22112, a lien, mortgage or*
31 *other encumbrance holder who, pursuant to NRS 108.225, asserts*
32 *priority over a lien provided for in NRS 108.221 to 108.246,*
33 *inclusive, and sections 2 to 16, inclusive, of this act, has the*
34 *burden of proof to establish that any work performed or materials*
35 *or equipment furnished was not visible from a reasonable*
36 *inspection of the property as of the date and time his or her lien,*
37 *mortgage or other encumbrance attached to the property.*

38 **Sec. 12.** *Whether a retention amount is withheld pursuant to*
39 *sections 13 to 16, inclusive, of this act, or otherwise:*

40 1. *The retention amount:*

41 (a) *Must not exceed 10 percent of:*

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

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



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

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

6 (d) Must be paid:

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

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

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

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

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

21 **Sec. 13.** 1. An owner, lessee, higher-tiered contractor,
22 lower-tiered contractor and escrow agency shall comply with the
23 requirements of sections 13 to 16, inclusive, of this act if:

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

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

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

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

37 (a) Obtain the services of an escrow agency to hold a retention
38 amount in trust pursuant to section 14 of this act;

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

43 (c) Before the issuance of any permit for the improvement or
44 work of improvement, submit a conformed copy of the recorded
45 notice of establishment of a trust account to the building inspector



1 or other governmental authority having jurisdiction over the
2 construction, alteration or repair of the improvement or work of
3 improvement.

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

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

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

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

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

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

16 (d) Identify the name of the governmental authority having
17 jurisdiction over the construction, alteration or repair of the
18 improvement or work of improvement on such property;

19 (e) Identify the name and address of the escrow agency;

20 (f) Include the date on which the owner or lessee obtained the
21 services of the escrow agency;

22 (g) Identify the number of the trust account, if any; and

23 (h) Be in substantially the following form:

24
25 Assessor's Parcel Number of Property:

26
27 **NOTICE OF ESTABLISHMENT**
28 **OF TRUST ACCOUNT**
29

30 Name and address of property owner:

31 Nature of owner's interest in the property:.....

32 Nature of owner's interest in the improvement or work of
33 improvement:

34 Name and address of lessee of property, if any:

35 Nature of interest of lessee, if any, in the property:.....

36 Nature of interest of lessee, if any, in the improvement or work
37 of improvement:.....

38 Name and description of the improvement or work of
39 improvement:

40 Address of the property upon which the improvement or work
41 of improvement is located:.....

42 Legal description of the improvement or work of improvement:

43 Name of governmental authority having jurisdiction over the
44 construction, alteration or repair of the improvement or
45 work of improvement:.....



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1 *Name and address of escrow agency:.....*
2 *Date of establishment of escrow:.....*
3 *Trust account number:*

4
5 *State of Nevada* }
6 }ss.
7 *County of.....* }

8
9 (print name), being first duly sworn on oath
10 according to law, deposes and says:

11
12 *I am authorized to sign this Notice of Establishment of Trust*
13 *Account on behalf of the owner or lessee of the above-identified*
14 *improvement or work of improvement. Under penalty of perjury, I*
15 *state that I have read the content of this Notice, and I know it to be*
16 *true and correct of my own personal knowledge.*

17
18 *Dated this day of,*

19
20 *By:*
21 *Print name:*
22 *Company name:*
23 *Title:*

24
25 *Subscribed and sworn to before me, a Notary Public, on this*
26 *day of the month of of the year*

27
28
29 *Notary Public County, Nevada*
30 *My appointment expires:*

31
32 *4. The notice of establishment of a trust account required*
33 *pursuant to subsection 2 must be signed and verified under oath*
34 *and penalty of perjury, by the owner or lessee or the owner or*
35 *lessee's authorized representative, that the information contained*
36 *therein is true and correct.*

37 *Sec. 14. 1. In addition to the requirements set forth in*
38 *section 12 of this act, a retention amount that is withheld pursuant*
39 *to sections 13 to 16, inclusive, of this act:*

40 *(a) Must be:*

41 *(1) Held in trust by an escrow agency for the benefit of the*
42 *prime contractor or the lower-tiered subcontractors from whom it*
43 *was withheld;*



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

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

7 (4) Kept separate from money belonging to the escrow
8 agency;

9 (b) Is the separate property of the prime contractor or the
10 lower-tiered subcontractors from whom it was withheld, regardless
11 of whether the retention amount has been deposited in a trust
12 account; and

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

15 2. Except as otherwise provided in subsection 3, if an owner
16 or lessee withholds or causes to be withheld a retention amount
17 from a payment to be made to a prime contractor and the prime
18 contractor's lower-tiered subcontractors, the owner or lessee shall
19 cause the withheld amount to be deposited immediately in a trust
20 account established pursuant to section 13 of this act.

21 3. If a construction disbursement account is established
22 pursuant to subsection 1 of NRS 108.2403, the construction
23 control shall immediately transfer the retention amount from the
24 construction disbursement account to the trust account established
25 pursuant to section 13 of this act when a progress payment is
26 made from the construction disbursement account to the prime
27 contractor and the prime contractor's lower-tiered subcontractors.

28 4. Use by an owner, lessee or escrow agency of a retention
29 amount in violation of the provisions of sections 13 to 16,
30 inclusive, of this act creates a rebuttable presumption, in any
31 action brought by a prime contractor or the lower-tiered
32 subcontractors from whom it was withheld and to whom it is owed,
33 that the owner, lessee or escrow agency has breached its fiduciary
34 duties with respect to the retention amount.

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

37 **Sec. 15.** 1. An owner or lessee shall pay, or cause the
38 escrow agency to pay, to the prime contractor a retention amount
39 as provided in subsection 1 of NRS 624.620 regardless of whether
40 the retention amount has been deposited in a trust account.

41 2. A higher-tiered contractor shall pay to a lower-tiered
42 subcontractor a retention amount as provided in subsection 1 of
43 NRS 624.624.

44 3. If an owner or lessee fails to satisfy the requirements of
45 sections 13 to 16, inclusive, of this act, the prime contractor who



1 *has furnished or will furnish materials or equipment for the*
2 *improvement or work of improvement may stop work after giving*
3 *written notice to the owner or lessee. If the prime contractor stops*
4 *work pursuant to this subsection, the prime contractor's lower-*
5 *tiered subcontractors may stop work. If the owner or lessee:*

6 *(a) Satisfies the requirements of sections 13 to 16, inclusive, of*
7 *this act within 25 days after a work stoppage, the prime contractor*
8 *and the prime contractor's lower-tiered subcontractors who*
9 *stopped work shall resume work, and the prime contractor and the*
10 *lower-tiered subcontractors are entitled to compensation from the*
11 *owner or lessee for any reasonable costs and expenses incurred*
12 *because of the delay and remobilization.*

13 *(b) Does not satisfy the requirements of sections 13 to 16,*
14 *inclusive, of this act within 25 days after a work stoppage, the*
15 *prime contractor may terminate the contract relating to the*
16 *improvement or work of improvement, and the prime contractor*
17 *and the prime contractor's lower-tiered subcontractors are entitled*
18 *to recover from the owner or lessee:*

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

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

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

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

32 *4. In addition to the interest, costs and attorney's fees to*
33 *which the prime contractor and the prime contractor's lower-*
34 *tiered subcontractors are entitled pursuant to subsection 3, the*
35 *prime contractor and the lower-tiered subcontractors are entitled*
36 *to recover from an owner or lessee who fails to comply with the*
37 *requirements of sections 13 to 16, inclusive, of this act, the*
38 *interest, costs and attorney's fees incurred by the prime contractor*
39 *and the lower-tiered subcontractors in collecting the retention*
40 *amount.*

41 *5. A building inspector or other governmental authority*
42 *having jurisdiction over the construction, alteration or repair of*
43 *an improvement or work of improvement shall not issue a*
44 *certificate of occupancy for the improvement or work of*



1 *improvement until such time as the owner, lessee or escrow*
2 *agency has:*

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

9 *(1) Deposited and is being held in the trust account as*
10 *required by section 14 of this act;*

11 *(2) Partially paid to the prime contractor and the lower-*
12 *tiered subcontractors to whom it is owed, with the balance of the*
13 *retention amount withheld being deposited and held in the trust*
14 *account as required by section 14 of this act; or*

15 *(3) Fully paid to the prime contractor and the lower-tiered*
16 *subcontractors to whom it is owed; and*

17 *(b) Provided a conformed copy of the recorded verification of*
18 *compliance to the building inspector or other governmental*
19 *authority having jurisdiction over the construction, alteration or*
20 *repair of the improvement or work of improvement.*

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

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

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

26 *(1) The property upon which the improvement or work of*
27 *improvement was constructed, altered or repaired; and*

28 *(2) The improvement or work of improvement constructed,*
29 *altered or repaired on such property;*

30 *(c) Identify the name of the improvement or work of*
31 *improvement and the address, legal description and assessor's*
32 *parcel number of the property upon which the improvement or*
33 *work of improvement was constructed, altered or repaired;*

34 *(d) Identify the name of the governmental authority having*
35 *jurisdiction over the construction, alteration or repair of the*
36 *improvement or work of improvement on the property;*

37 *(e) Identify the permit number, if any, for the improvement or*
38 *work of improvement that was constructed, altered or repaired on*
39 *the property;*

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

41 *(g) Include the date on which the owner or lessee obtained the*
42 *services of the escrow agency;*

43 *(h) Identify the number of the trust account, if any;*

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



1 (1) Deposited and is being held in the trust account as
2 required by section 14 of this act;

3 (2) Partially paid to the prime contractor and the lower-
4 tiered subcontractors to whom it is owed, with the balance of the
5 retention amount withheld being deposited and held in the trust
6 account as required by section 14 of this act; or

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

9 (j) Be signed and verified by an authorized representative of
10 the owner, lessee or escrow agency under oath and subject to
11 penalty of perjury; and

12 (k) Be in substantially the following form:

13
14 Assessor's Parcel Number of Property:

15
16 **VERIFICATION OF COMPLIANCE**

17
18 Name and address of property owner:

19 Nature of owner's interest in the property:.....

20 Nature of owner's interest in the improvement or work of
21 improvement:

22 Name and address of lessee of property, if any:

23 Nature of interest of lessee, if any, in the property:.....

24 Nature of interest of lessee, if any, in the improvement or work
25 of improvement:

26 Name and description of the improvement or work of
27 improvement:

28 Address of property upon which the improvement or work of
29 improvement is located:.....

30 Legal description of the improvement or work of improvement:

31 Name of governmental authority having jurisdiction over the
32 construction, alteration or repair of the improvement or
33 work of improvement:.....

34 Name and address of escrow agency:.....

35 Date of establishment of escrow:.....

36 Trust account number:

37 Permit number:

38 Total retention amount deposited in the trust account over the
39 course of the improvement or work of improvement:.....

40 Total retention amount paid from the trust account over the
41 course of the improvement or work of improvement:.....

42 Total retention amount currently held in the trust account:.....



State of Nevada }
 }ss.
County of..... }

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

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 14 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 14 of this act;

OR

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

Dated this day of,

*By:
Print name:
Company name:
Title:*



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

3
4 *Notary Public..... County, Nevada*
5 *My appointment expires:*

6
7 *7. The rights and remedies provided to a prime contractor*
8 *and the prime contractor's lower-tiered subcontractors pursuant*
9 *to sections 13 to 16, inclusive, of this act are in addition to any*
10 *other rights and remedies that may exist at law or in equity,*
11 *including, without limitation, a lien claimant's right to include a*
12 *retention amount in the lienable amount of any notice of lien that*
13 *the lien claimant may record or cause to be recorded pursuant to*
14 *NRS 108.221 to 108.246, inclusive, and sections 2 to 16, inclusive,*
15 *of this act.*

16 *8. The duty of an owner, lessee or higher-tiered contractor to*
17 *comply with the provisions of NRS 108.221 to 108.246, inclusive,*
18 *and sections 2 to 16, inclusive, of this act is mandatory and may*
19 *not be waived, modified or released by contract or otherwise.*

20 **Sec. 16.** *1. An escrow agency shall keep detailed and*
21 *complete records of all transactions with respect to a trust*
22 *account, including, without limitation, the retention amount*
23 *received from the owner or lessee and any amounts paid from the*
24 *trust account.*

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

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

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

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

37 **Sec. 17.** *NRS 108.221 is hereby amended to read as follows:*

38 *108.221 As used in NRS 108.221 to 108.246, inclusive, and*
39 *sections 2 to 16, inclusive, of this act, unless the context otherwise*
40 *requires, the words and terms defined in NRS 108.22104 to*
41 *108.22188, inclusive, and sections 2 to 10, inclusive, of this act*
42 *have the meanings ascribed to them in those sections.*



1 **Sec. 18.** NRS 108.22112 is hereby amended to read as
2 follows:

3 108.22112 “Commencement of construction” means the date
4 on which ~~the~~

5 ~~1. Work~~ *any work* performed ~~the~~ or

6 ~~2. Materials~~ *materials* or equipment furnished in connection
7 with a work of improvement ~~the~~

8 ~~that is subject to a lien pursuant to NRS 108.221 to 108.246,
9 *inclusive, and sections 2 to 16, inclusive, of this act* is visible from
10 a reasonable inspection of the ~~site~~ *property*.~~

11 **Sec. 19.** NRS 108.22132 is hereby amended to read as
12 follows:

13 108.22132 “Lien” means the statutory rights and security *or*
14 *ownership* interest in ~~the~~:

15 1. *A construction disbursement account established pursuant to*
16 *NRS 108.2403* ~~the~~;

17 2. *A retention amount;* or ~~the property~~

18 3. *Property* or any improvements thereon provided to a lien
19 claimant by NRS 108.221 to 108.246, inclusive ~~the~~, *and sections 2*
20 *to 16, inclusive, of this act.*

21 **Sec. 20.** NRS 108.22188 is hereby amended to read as
22 follows:

23 108.22188 “Work of improvement” means the entire structure
24 or scheme of improvement as a whole, including, without limitation,
25 all work, materials and equipment to be used in or for the
26 construction, alteration or repair of the property or any improvement
27 thereon, whether under multiple prime contracts or a single prime
28 contract except as follows:

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

34 2. If the improvement of the site is provided for in a prime
35 contract that is separate from all prime contracts for the construction
36 of one or more buildings on the property, and if the improvement of
37 the site ~~was contemplated by the contracts to be a separate work of~~
38 ~~improvement to be completed before the commencement of~~ *is*
39 *unrelated to the* construction of the buildings, the improvement of
40 the site shall be deemed a separate work of improvement from the
41 construction of the ~~buildings and the commencement of~~
42 ~~construction of the improvement of the site does not constitute the~~
43 ~~commencement of construction of the~~ buildings. As used in this
44 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. 21. 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:

(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. 22. 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 16, 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 16, 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.



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Sec. 23. 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 16, 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 16, 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 16, 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 16, 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. 24. 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



1 *NRS 108.221 to 108.246, inclusive, and sections 2 to 16, inclusive,*
2 *of this act; and*

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

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

7 2. A thing is done "in good faith" within the meaning of NRS
8 162.010 to 162.140, inclusive, when it is in fact done honestly,
9 whether it is done negligently or not.

10 **Sec. 25.** NRS 608.150 is hereby amended to read as follows:

11 608.150 1. Every original contractor making or taking any
12 contract in this State *that requires the performance of any kind of*
13 *labor, including, without limitation, a contract* for the erection,
14 construction, alteration or repair of any building or structure, or
15 other work, shall assume and is liable for the indebtedness for labor
16 incurred by any subcontractor or any contractors acting under, by or
17 for the original contractor in performing any labor, construction or
18 other work included in the subject of the original contract, for labor,
19 *including, without limitation, payments required under a collective*
20 *bargaining agreement*, and for the requirements imposed by
21 chapters 616A to 617, inclusive, of NRS.

22 2. It is unlawful for any contractor or any other person to fail to
23 comply with the provisions of subsection 1, or to attempt to evade
24 the responsibility imposed thereby, or to do any other act or thing
25 tending to render nugatory the provisions of this section.

26 3. ~~The~~ *Except as otherwise provided in NRS 624.624 or*
27 *624.626, the full amount of any indebtedness incurred by a*
28 *subcontractor or contractor acting under an original contractor as*
29 *described in subsection 1 for labor must be paid not later than 90*
30 *days after the performance of the labor.*

31 4. *A person who is entitled to payment pursuant to subsection*
32 *1 may, or the* district attorney of any county wherein the defendant
33 may reside or be found shall , institute civil proceedings against any
34 such original contractor failing to comply with the provisions of this
35 section in a civil action for the amount of all wages , *including,*
36 *without limitation, payments required under a collective*
37 *bargaining agreement*, and damage that may be owing or have
38 accrued as a result of the failure of any subcontractor acting under
39 the original contractor . ~~and any~~

40 5. *Any* property of the original contractor, not exempt by law,
41 is subject to attachment and execution for the payment of any
42 judgment that may be recovered in any action under the provisions
43 of this section.

44 6. *As used in this section:*



(a) "Contractor" means any party to a contract, whether oral or written, for the purpose of providing, performing or obtaining personal services, labor of any kind or work for another party. The term includes, without limitation, a person licensed as a contractor pursuant to chapter 624 of NRS.

(b) "Labor" includes, without limitation, personal service.

(c) "Original contractor" means a contractor who enters into an oral or written agreement with an owner or other party for whom the original contractor agrees to provide, perform or obtain the performance of any kind of labor.

(d) "Subcontractor" includes, without limitation, an independent contractor.

Sec. 26. 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 8 of this act.

Sec. 27. NRS 624.606 is hereby amended to read as follows:

624.606 As used in NRS 624.606 to 624.630, inclusive, *and section 26 of this act, unless the context otherwise requires*, the words and terms defined in NRS 624.607 to 624.6086, inclusive, *and section 26 of this act* have the meanings ascribed to them in those sections.

Sec. 28. 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, 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 pursuant to the agreement, must not exceed 10 percent of the amount of the payment to be made;* *section 12 of this act. With respect to any retention amount described in this subparagraph:*



1 (I) *The owner must pay the retention amount to the*
2 *prime contractor in the time and manner required by NRS*
3 *624.620; and*

4 (II) *If applicable, the withholding of the retention*
5 *amount must comply with the requirements of sections 13 to 16,*
6 *inclusive, of this act.*

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

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

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

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

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

28 3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of
29 subsection 2 or paragraph (b) of subsection 2, an owner intends to
30 withhold any amount from a payment to be made to a prime
31 contractor, the owner must give, on or before the date the payment
32 is due, a 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 of the request for payment that will be
35 withheld from the prime contractor;

36 (b) Give a reasonably detailed explanation of the condition or
37 the reason the owner will withhold that amount, including, without
38 limitation, a specific reference to the provision or section of the
39 agreement, and any documents relating thereto, and the applicable
40 building code, law or regulation with which the prime contractor has
41 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 or a notice of objection pursuant to
45 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. 29. NRS 624.620 is hereby amended to read as follows:

624.620 1. Except as otherwise provided in this section, *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, a retention amount*, 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 ~~[(1)]~~,
↪ *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 ~~[(1)]~~ *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



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

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

4 4. A prime contractor who receives a notice of withholding
5 pursuant to subsection 3 may correct any condition or reason for the
6 withholding described in the notice of withholding and thereafter
7 provide written notice to the owner of the correction of the condition
8 or reason for the withholding. The notice of correction must be
9 sufficient to identify the scope and manner of the correction of the
10 condition or reason for the withholding and be signed by an
11 authorized representative of the prime contractor. If an owner
12 receives a written notice from the prime contractor of the correction
13 of a condition or reason for the withholding described in an owner's
14 notice of withholding pursuant to subsection 3, the owner must,
15 within 10 days after receipt of such notice:

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

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

27 5. The partial occupancy or availability of a ~~building~~ *work of*
28 *improvement* requires payment in direct proportion to the value of
29 the part of the ~~building~~ *work of improvement* which is partially
30 occupied or partially available. For works of improvement which
31 involve more than one building, each building must be considered
32 separately in determining the amount of money which is payable to
33 the prime contractor.

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

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

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

43 7. *As used in this section:*

44 (a) *"Escrow agency" has the meaning ascribed to it in section*
45 *3 of this act.*



(b) "Lessee" has the meaning ascribed to it in section 5 of this act.

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

Sec. 30. 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:

(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, the higher-tiered contractor may:

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

(1) ~~Except as otherwise provided in this subparagraph,~~ 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;~~ section 12 of this act. With respect to any retention amount described in this subparagraph:

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

(II) If applicable, the withholding of the retention amount must comply with the requirements of sections 13 to 16, inclusive, of this act.

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



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

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

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

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

22 3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of
23 subsection 2 or paragraph (b) of subsection 2, a higher-tiered
24 contractor intends to withhold any amount from a payment to be
25 made to a lower-tiered subcontractor, the higher-tiered contractor
26 must give, on or before the date the payment is due, a written notice
27 to the lower-tiered subcontractor of any amount that will be
28 withheld and give a copy of such notice to all reputed higher-tiered
29 contractors and the owner. The written notice of withholding must:

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

32 (b) Give a reasonably detailed explanation of the condition or
33 the reason the higher-tiered contractor will withhold that amount,
34 including, without limitation, a specific reference to the provision or
35 section of the agreement with the lower-tiered subcontractor, and
36 any documents relating thereto, and the applicable building code,
37 law or regulation with which the lower-tiered subcontractor has
38 failed to comply; and

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

41 4. A lower-tiered subcontractor who receives a notice of
42 withholding pursuant to subsection 3 or a notice of objection
43 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. 31. 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 13 to 16, inclusive, of this act.



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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 8 of this act.

Sec. 32. 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 ~~H~~, and sections 2 to 16, inclusive, of this act.

Sec. 33. 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. "Construction control" has the meaning ascribed to it in NRS 627.050.

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

4. "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 16, 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, lower-tiered 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 and the performance of the services of a construction control. *As used in this subsection:*

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

(b) "Lower-tiered subcontractor" has the meaning ascribed to it in section 6 of this act.



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

(d) "Supplier" has the meaning ascribed to it in section 9 of this act.

5. "Escrow agency" means:

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

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

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

Sec. 34. NRS 645A.015 is hereby amended to read as follows:
645A.015 ~~He~~

1. *Except as otherwise provided in subsection 2, the provisions of this chapter do not apply to:*

~~(a)~~ (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.

~~(b)~~ (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.

~~(c)~~ (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.

~~(d)~~ (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 16, inclusive, of this act.*

Sec. 35. 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 6 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. 36. NRS 662.231 is hereby amended to read as follows:

662.231 As used in NRS 662.231 to 662.245, inclusive, *and section 35 of this act*, “business of a trust company” or “trust company business” has the meaning ascribed to it in NRS 669.029.

Sec. 37. 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 8 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 13 to 16, inclusive, of this act.*

Sec. 38. NRS 669.045 is hereby amended to read as follows:

669.045 1. “Fiduciary” means ~~†~~:



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

6 (b) *An owner or lessee who holds a retention amount, or an*
7 *escrow agency that administers an escrow, pursuant to NRS*
8 *108.221 to 108.246, inclusive, and sections 2 to 16, inclusive, of*
9 *this act.*

10 2. As used in this section, “administrator” includes servicers or
11 administrators of individual retirement accounts within the meaning
12 of section 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. §
13 408(a), where the servicer or administrator holds itself out to the
14 public for performance of such services and holds or maintains an
15 ownership interest in the servicing rights of such accounts, or
16 possesses or controls any of the assets of such accounts, including
17 cash.

18 **Sec. 39.** NRS 669.080 is hereby amended to read as follows:

19 669.080 1. ~~†This†~~ *Except as otherwise provided in*
20 *subsection 3, this* chapter does not apply to a person who:

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

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

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

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

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

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

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

41 (h) Engages in the business of an escrow agency, escrow agent
42 or escrow officer pursuant to the provisions of chapter 645A or
43 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 13 to 16, inclusive, of this act. As used in this subsection:

(a) "Lessee" has the meaning ascribed to it in section 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 8 of this act.

Sec. 40. The amendatory provisions of section 25 of this act do not apply to a contract entered into before July 1, 2013.

Sec. 41. 1. This section and sections 1, 7, 10, 11, 18 and 20 of this act become effective upon passage and approval.

2. Sections 2 to 6, inclusive, 8, 9, 12 to 17, inclusive, 19 and 21 to 40, inclusive, of this act become effective on July 1, 2013.

