

SENATE BILL NO. 423—SENATOR ROBERSON (BY REQUEST)

MARCH 20, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to statutory liens for design professionals. (BDR 9-589)

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

~

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

AN ACT relating to statutory liens; revising certain provisions relating to statutory liens for design professionals; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes certain design professionals, including, without limitation, architects, engineers, land surveyors and geologists, to attach a mechanic's lien against a property, any improvements constructed on the property and any construction disbursement account for work carried out in connection with a work of improvement. (NRS 108.2214, 108.222) Existing law also provides that such a lien has priority of repayment over other liens, mortgages or encumbrances which may have attached to the property, any improvement constructed on the property or any construction disbursement account after the date of the commencement of construction of a work of improvement. (NRS 108.225) Existing law defines "commencement of construction" as the date on which work, materials or equipment are visible from a reasonable inspection of the construction site. (NRS 108.22112) The Nevada Supreme Court has held that work conducted by a design professional is subject to these requirements, even though the work performed by a design professional might not be visible from a reasonable inspection of a construction site and this work would likely be performed before any visible work has started. (*J.E. Dunn Northwest, Inc. v. Corus Construction Venture, LLC*, 127 Nev. 72 (2011))

Section 3 of this bill authorizes a design professional to attach a lien against a property, any improvements constructed on the property and any construction disbursement account for any work carried out before the beginning of visible construction, with priority of repayment over any other lien, mortgage or encumbrance. This priority is based on the date on which the design professional records a lien, instead of when the work becomes visible, as long as a notice of lien is filed by the design professional with the county recorder not later than 10 business days after beginning work or entering into a contract, whichever is earlier. **Section 3** provides for the discharge or release of such a lien in connection with a construction loan and the payment of any amount due to the design professional.



* S B 4 2 3 *

Section 3 further provides that after such a lien has been released, a design professional may perfect a mechanic's lien based on existing law for any further work performed, with priority of repayment based on the date the commencement of construction is visible.

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 and 3 of this act.

Sec. 2. *"Design professional" means a person who holds a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS or a person who primarily practices as a professional engineer, professional geologist, land surveyor, architect or landscape architect.*

Sec. 3. 1. *Upon recordation, a design professional has a lien against a property, any improvements for which the work of the design professional was furnished or to be furnished, and any construction disbursement account established pursuant to NRS 108.2403, for any work performed before the commencement of construction of a work of improvement is visible.*

2. A design professional may record a lien pursuant to this section in the manner set forth in subsection 2 of NRS 108.226.

3. The lien of a design professional pursuant to this section is preferred to any other lien perfected after the time the design professional records the lien.

4. Every mortgage or encumbrance imposed upon, or conveyance made of, property affected by a lien pursuant to this section after the time the design professional records such lien is subordinate and subject to such lien.

5. A lien pursuant to this section may be discharged or released when the lienable amount is paid to the design professional, including, without limitation, when the lienable amount is paid through a construction loan relating to the work of improvement.

6. The lien of a design professional pursuant to this section expires 6 months after the date of recordation, but may be renewed for an additional period of 6 months by recording a notice of lien in the manner set forth in subsection 2 of NRS 108.226.

7. A design professional must accept payment of the lienable amount as full satisfaction for any work performed by the design professional before the commencement of construction of the work of improvement is visible.

8. Upon the discharge or release of a lien pursuant to this section, a design professional may perfect a mechanic's lien



* S B 4 2 3 *

1 *pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 and*
2 *3 of this act for any subsequent work which the design*
3 *professional may perform, with the priority of repayment set forth*
4 *in subsection 1 of NRS 108.225.*

5 **Sec. 4.** NRS 108.221 is hereby amended to read as follows:

6 108.221 As used in NRS 108.221 to 108.246, inclusive, *and*
7 *sections 2 and 3 of this act*, unless the context otherwise requires,
8 the words and terms defined in NRS 108.22104 to 108.22188,
9 inclusive, *and section 2 of this act* have the meanings ascribed to
10 them in those sections.

11 **Sec. 5.** NRS 108.22104 is hereby amended to read as follows:

12 108.22104 “Agent of the owner” means every ~~architect,~~
13 ~~builder, contractor, engineer, geologist, land surveyor,~~ *design*
14 *professional*, lessee, miner, subcontractor or other person having
15 charge or control of the property, improvement or work of
16 improvement of the owner, or any part thereof.

17 **Sec. 6.** NRS 108.2214 is hereby amended to read as follows:

18 108.2214 1. “Lien claimant” means any person who provides
19 work, material or equipment with a value of \$500 or more to be
20 used in or for the construction, alteration or repair of any
21 improvement, property or work of improvement. The term includes,
22 without limitation, every artisan, builder, contractor, laborer, lessor
23 or renter of equipment, materialman, miner, subcontractor or other
24 person who provides work, material or equipment, and any person
25 who performs services as ~~an architect, engineer, land surveyor or~~
26 ~~geologist,~~ *a design professional*, in relation to the improvement,
27 property or work of improvement.

28 2. As used in this section, “laborer” includes, without
29 limitation, an express trust fund to which any portion of the total
30 compensation of a laborer, including any fringe benefit, must be
31 paid pursuant to an agreement with that laborer or the collective
32 bargaining agent of that laborer. For the purposes of this subsection,
33 “fringe benefit” does not include any interest, liquidated damages,
34 attorney’s fees, costs or other penalties that may be incurred by the
35 employer of the laborer for failure to pay any such compensation
36 under any law or contract.

37 **Sec. 7.** NRS 108.225 is hereby amended to read as follows:

38 108.225 1. The liens provided for in NRS 108.221 to
39 108.246, inclusive, *and sections 2 and 3 of this act* are preferred to:

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

43 (b) Any lien, mortgage or other encumbrance of which the lien
44 claimant had no notice and which was unrecorded against the



1 property at the commencement of construction of a work of
2 improvement.

3 2. Every mortgage or encumbrance imposed upon, or
4 conveyance made of, property affected by the liens provided for in
5 NRS 108.221 to 108.246, inclusive, *and sections 2 and 3 of this act*
6 after the commencement of construction of a work of improvement
7 are subordinate and subject to the liens provided for in NRS 108.221
8 to 108.246, inclusive, *and sections 2 and 3 of this act*, regardless of
9 the date of recording the notices of liens.

10 **Sec. 8.** NRS 108.226 is hereby amended to read as follows:

11 108.226 1. ~~1. The~~ *Except as otherwise provided in subsection*
12 *2, to* perfect a lien, a lien claimant must record a notice of lien in the
13 office of the county recorder of the county where the property or
14 some part thereof is located in the form provided in subsection ~~5:~~
15 *6:*

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

- 18 (1) The completion of the work of improvement;
19 (2) The last delivery of material or furnishing of equipment
20 by the lien claimant for the work of improvement; or
21 (3) The last performance of work by the lien claimant for the
22 work of improvement; or

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

26 2. ~~The~~ *A design professional may perfect a lien for any*
27 *work performed before the commencement of construction of a*
28 *work of improvement is visible pursuant to section 3 of this act by*
29 *recording a notice of lien in the office of the county recorder of*
30 *the county where the property or some part thereof is located,*
31 *in the form provided in subsection 6, within 10 business days after*
32 *the design professional begins work or enters into a contract for*
33 *work relating to the work of improvement, whichever is earlier.*

34 3. A notice of lien *pursuant to this section* must contain:

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

37 (b) The name of the owner if known.

38 (c) The name of the person by whom the lien claimant was
39 employed or to whom the lien claimant furnished the material or
40 equipment.

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

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

44 ~~3.—The~~



* S B 4 2 3 *

1 4. A notice of lien *pursuant to this section* must be verified by
2 the oath of the lien claimant or some other person. The notice of lien
3 need not be acknowledged to be recorded.

4 ~~4.4~~ 5. It is unlawful for a person knowingly to make a false
5 statement in or relating to the recording of a notice of lien pursuant
6 to the provisions of this section. A person who violates this
7 subsection is guilty of a gross misdemeanor and shall be punished
8 by a fine of not less than \$5,000 nor more than \$10,000.

9 ~~4.5~~ 6. A notice of lien *pursuant to this section* must be
10 substantially in the following form:

11
12 Assessor's Parcel Numbers

13
14 NOTICE OF LIEN

15
16 The undersigned claims a lien upon the property described in
17 this notice for work, materials or equipment furnished or to
18 be furnished for the improvement of the property:

- 19 1. The amount of the original contract is: \$.....
20 2. The total amount of all additional or changed work,
21 materials and equipment, if any, is: \$.....
22 3. The total amount of all payments received to date is: \$
23 4. The amount of the lien, after deducting all just credits
24 and offsets, is: \$.....
25 5. The name of the owner, if known, of the property is:
26 6. The name of the person by whom the lien claimant was
27 employed or to whom the lien claimant furnished or agreed to
28 furnish work, materials or equipment is:
29 7. A brief statement of the terms of payment of the lien
30 claimant's contract is:
31
32 8. A description of the property to be charged with the lien
33 is:
34

35
36 (Print Name of Lien Claimant)

37
38 By:
39 (Authorized Signature)

40
41 State of Nevada)
42) ss.
43 County of)



* S B 4 2 3 *

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

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

.....
(Authorized Signature of Lien Claimant)

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

.....
Notary Public in and for
the County and State

~~16-1~~ 7. Except as otherwise provided in subsection ~~17-1~~ 8, if a work of improvement involves the construction, alteration or repair of multifamily or single-family residences, including, without limitation, apartment houses, a lien claimant, except laborers ~~H~~ or *design professionals*, must serve a 15-day notice of intent to lien incorporating substantially the same information required in a notice of lien upon both the owner and the reputed prime contractor before recording a notice of lien. Service of the notice of intent to lien must be by personal delivery or certified mail and will extend the time for recording the notice of lien described in subsection 1 by 15 days. A notice of lien for materials or equipment furnished or to be furnished for work or services performed or to be performed, except labor, for a work of improvement involving the construction, alteration or repair of multifamily or single-family residences may not be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, *and sections 2 and 3 of this act* unless the 15-day notice of intent to lien has been given to the owner.

~~17-1~~ 8. The provisions of subsection ~~16-1~~ 7 do not apply to the construction of any nonresidential construction project.

Sec. 9. NRS 108.236 is hereby amended to read as follows:

108.236 1. In every case in which different liens are asserted against any property, the court, in the judgment, must declare the rank of each lien claimant or class of lien claimants in the following order:

(a) First: *Work performed by a design professional before the commencement of construction of a work of improvement is visible.*



1 **(b) Second:** All labor whether performed at the instance or
2 direction of the owner, the subcontractor or the prime contractor.

3 ~~**(b) Second:**~~

4 **(c) Third:** Material suppliers and lessors of equipment.

5 ~~**(c) Third:**~~

6 **(d) Fourth:** All other lien claimants who have performed their
7 work, in whole or in part, under contract with the prime contractor
8 or any subcontractor.

9 ~~**(d) Fourth:**~~

10 **(e) Fifth:** All other lien claimants.

11 2. The proceeds of the sale of the property must be applied
12 to each lien claimant or class of lien claimants in the order of its
13 rank.

14 **Sec. 10.** NRS 108.2433 is hereby amended to read as follows:

15 108.2433 1. Except as otherwise provided in subsection 2, a
16 notice of lien upon the property provided for in NRS 108.221 to
17 108.246, inclusive, **and sections 2 and 3 of this act** may be
18 discharged by an entry on the margin of the record thereof, signed
19 by the lien claimant or the lien claimant's personal representative or
20 assignee in the presence of the recorder or the recorder's deputy,
21 acknowledging the satisfaction of or value received for the notice of
22 lien and the debt secured thereby. The recorder or the deputy shall
23 subscribe the entry as witness. The entry has the same effect as a
24 discharge or release of the notice of lien acknowledged and recorded
25 as provided by law. The recorder shall properly index each marginal
26 discharge.

27 2. If the notice of lien has been recorded by a microfilm or
28 other photographic process, a marginal release may not be used and
29 an acknowledged discharge or release of the notice of lien must be
30 recorded.

31 3. If the recorder or the recorder's deputy is presented with a
32 certificate executed by the lien claimant or the lien claimant's
33 personal representative or assignee, specifying that the notice of lien
34 has been paid or otherwise satisfied or discharged, the recorder or
35 the deputy shall discharge the notice of lien upon the record.

36 **Sec. 11.** NRS 108.2437 is hereby amended to read as follows:

37 108.2437 1. As soon as practicable, but not later than 10 days
38 after a notice of lien upon the property pursuant to NRS 108.221 to
39 108.246, inclusive, **and sections 2 and 3 of this act** is fully satisfied
40 or discharged, the lien claimant shall cause to be recorded a
41 discharge or release of the notice of lien in substantially the
42 following form:



* S B 4 2 3 *

Assessor's Parcel Numbers

DISCHARGE OR RELEASE OF NOTICE OF LIEN

NOTICE IS HEREBY GIVEN THAT:

The undersigned did, on the day of the month of of the year, record in Book, as Document No., in the office of the county recorder of County, Nevada, its Notice of Lien, or has otherwise given notice of his or her intention to hold a lien upon the following described property or improvements, owned or purportedly owned by, located in the County of, State of Nevada, to wit:

(Legal Description or Address of the
Property or Improvements)

NOW, THEREFORE, for valuable consideration the undersigned does release, satisfy and discharge this notice of lien on the property or improvements described above by reason of this Notice of Lien.

.....
(Signature of Lien Claimant)

2. If the lien claimant fails to comply with the provisions of subsection 1, the lien claimant is liable in a civil action to the owner of the property, his or her heirs or assigns for any actual damages caused by the lien claimant's failure to comply with those provisions or \$100, whichever is greater, and for a reasonable attorney's fee and the costs of bringing the action.

