

# Mechanic's Liens in Practice (NV)

JOEL E. TASCA AND HOLLY PRIEST, BALLARD SPAHR LLP, WITH PRACTICAL LAW REAL ESTATE

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A Practice Note addressing statutory mechanic's liens that may arise out of construction projects for the improvement of privately owned residential and commercial real property in Nevada. This Note focuses on providing practical guidance on the processes and procedures for perfecting, enforcing, and releasing mechanic's liens in Nevada.

A mechanics' and materialmen's lien (mechanic's lien) can be a powerful tool to protect a contractor, subcontractor, or supplier that has not been paid for work or services performed or materials furnished to improve privately owned real property. Chapter 108 of Title 9 of the Nevada Revised Statutes governs mechanic's liens on privately owned residential and commercial real property in Nevada (NRS 108.221 to 108.246).

This Note discusses the processes and procedures when:

- Preparing a valid notice of lien.
- Perfecting and enforcing lien rights.
- Determining the priority of lien rights.
- Releasing or discharging a mechanic's lien.

The Nevada mechanic's lien statutes do not govern improvements to public property.

## PRE-LIEN MATTERS

### PERSONS ENTITLED TO A MECHANIC'S LIEN

Every person (lien claimant) providing work, material, or equipment valued at \$500 or more to the construction, alteration, or repair of any real property or to an improvement on real property is entitled to a lien for payment. Lien claimants include:

- Artisans.
- Builders.

- Contractors.
- Laborers.
- Lessors or renters of equipment.
- Materialmen.
- Miners.
- Subcontractors or other persons providing work, material, or equipment.
- Professional service providers, including:
  - architects;
  - engineers;
  - surveyors; and
  - geologists.

(NRS 108.2214(1).)

No contract directly with the real property owner is required (NRS 108.222).

Any lien claimant performing work that requires a state license but that has failed to obtain the license is not entitled to a lien (NRS 108.222(2)).

### PROPERTY INTERESTS SUBJECT TO A MECHANIC'S LIEN

In Nevada, a mechanic's lien can attach to:

- The property.
- Any improvements for which the work, materials, and equipment were furnished or are to be furnished to the property.
- Any construction disbursement account.

(NRS 108.222(1).)

"Property" means:

- The land, real property, or mining claim of an owner, including all buildings, improvements, and fixtures.
- A convenient space on, around, and about the land, or so much as may be required for the convenient use and occupation of the land.

(NRS 108.22172.)

An "improvement" is considered a development, enhancement, or addition to property (NRS 108.22128). Examples of improvements include:

- A building, railway, bridge, fence, street, or sidewalk.
- A system for irrigation, plants, sod, or other landscaping.
- Grading, grubbing, filling, or excavating.

(NRS 108.22128.)

If there is a construction contract for work on contiguous lots, the mechanic's lien attaches to the entire group of contiguous lots (*Schultz v. King*, 228 P.2d 401, 405 (Nev. 1951)).

#### **NOTICE OF RIGHT TO LIEN**

Most claimants having a potential lien claim are required to serve a notice of right to lien as a condition precedent to a valid lien claim. When required, the lien claimant must serve the following people with this notice:

- The property owner.
- The prime contractor if the claimant is a subcontractor or equipment or material supplier.

(NRS 108.245(1).)

The following lien claimants are not required to serve a notice of right to lien as a condition precedent to a valid lien claim:

- Claimants performing only labor to the real property (laborers).
- Claimants having rights under NRS 608.150.
- Prime contractors or other persons having a direct contract with the property owner.

(NRS 108.245(1), (5).)

Serve the notice of right to lien any time after the claimant first provided material, work, or services for the improvement of the real property. If there is a contract between the parties, the amount of the lien claim is limited to the unpaid balance owed under the contract. If there is no contract, the amount of the lien claim is equal to the fair market value of the material, work, or services. (NRS 108.222(1)(a), (b).)

Serve the notice of right to lien by either:

- Personal delivery.
- Certified mail.

(NRS 108.245(1).)

Once the claimant serves the notice of right to lien, the claimant may only claim a lien for the value of the material, work, or services provided:

- In the 31 days before the claimant delivered the notice of right to lien.
- After the claimant delivered the notice of right to lien until completion.

(NRS 108.245(6).)

When required, failure to timely serve a notice of right to lien on the property owner is fatal to a valid lien claim (NRS 108.245(3)).

A subcontractor or equipment or material supplier that serves the property owner with the notice of intent to lien but fails to also serve a copy on the prime contractor is subject to disciplinary proceedings. This failure is not fatal to the subcontractor or equipment or material supplier's lien claim. (NRS 108.245(1).)

#### **Required Content and Form of the Notice of Right to Lien**

Nevada law prescribes the form for the notice of right to lien. The notice must be substantially in the statutory form. Do not alter the form.

The notice of right to lien must include:

- The property owner's name and address.
- A general description of the work, materials, equipment, or services contributed by the claimant.
- A property description or street address.
- A statement that the work, materials, equipment, or services were provided under contract.
- The name of the party that contracted for the work, materials, equipment, or services.
- A statement that the claimant has the right to claim a lien in the future if not paid.
- The claimant's signature.

(NRS 108.245(1).)

#### **NOTICE OF INTENT TO LIEN (RESIDENTIAL ONLY)**

Any lien claimant providing work, equipment, materials, or services under contract for the improvement of single family or multi-family residences (including apartment houses) must serve the property owner with a notice of intent to lien (NRS 108.226). Laborers do not have to serve a notice of intent to lien (NRS 108.226(6)).

The notice of intent to lien is in addition to the requirement to serve a notice of right to lien.

The claimant must serve the notice of intent to lien by either:

- Personal delivery.
- Certified mail.

(NRS 108.226(6).)

Serve the notice of intent to lien at least 15 days before recording the notice of lien (NRS 108.226(6); see Notice of Lien).

#### **Required Content and Form of the Notice of Intent to Lien**

The Nevada mechanic's lien statute prescribes the form and content for the notice of intent to lien. A claimant must substantially comply with the statutory form. (NRS 108.245(1).)

The notice of intent to lien:

- Is addressed to the owner at the owner's address.
- Notifies the owner that the claimant has supplied materials or equipment or performed work or services for the improvement of the owner's real property.
- Includes a general description of the materials, equipment, work, or services.

- Identifies if the claimant worked under a contract with the general contractor or a subcontractor.
- Notifies the property owner that the claimant may record a notice of lien at a future date, if necessary.

## CREATING AND PERFECTING A MECHANIC'S LIEN

### NOTICE OF LIEN

A claimant perfects its mechanic's lien when the claimant records a notice of lien:

- With the county recorder for the county where the real property is located.
- Within 90 days following:
  - the completion of the work;
  - the last date the claimant delivered material or furnished equipment for the improvement; or
  - the last date the claimant performed work for the improvement.

(NRS 108.226(1) and 108.228.)

The claimant must serve the notice of lien on the property owner within 30 days following recording. Complete service by any of the following methods:

- Personal delivery on the owner or the registered agent of the owner.
- Certified mail, return receipt requested to the owner's residence, usual place of business, or registered agent's address.

(NRS 108.227(1)(a), (b).)

If the claimant cannot determine the owner's or registered agent's address, the claimant may complete service by doing all of the following (commonly known as "nail and mail" service):

- Posting a copy of the notice of lien in a conspicuous place on the property.
- Delivering a copy of the notice of lien to any person residing at the property.
- Mailing a copy of the notice of lien addressed to the property owner at:
  - the property;
  - the owner's address identified in the vesting deed;
  - the owner's address identified in the property tax records (county assessor's office) for the improved property; or
  - the owner's address identified in the records of the county recorder for the county where the real property is located.

(NRS 108.227(1)(c).)

If there is more than one property owner, the claimant satisfies the service requirements by serving one of the owners (NRS 108.227(2)).

Claimants other than the prime contractor (subcontractors, equipment suppliers, and materialmen) serving and recording a notice of lien must deliver a copy to the prime contractor. Failure to deliver notice to the prime contractor is grounds for disciplinary proceedings. (NRS 108.227(3).)

### Required Content and Form of Notice of Lien

The Nevada mechanic's lien law prescribes the form for the notice of lien. The notice of lien must substantially comply with the statutory form. (NRS 108.226(5).)

The notice of lien must include all of the following:

- The amount claimed due, after deducting all credits and offsets.
- The owner's name, if known.
- The name of the party that contracted with the claimant.
- The payment terms.
- A description of the property sufficient for identification (legal description, property address, or assessor's parcel number).
- (NRS 108.226(2).)
- The claimant's signature acknowledged under oath (NRS 108.226(3)).

Failure to strictly comply is fatal to a valid lien claim.

### Notice of Completion

The property owner can accelerate the deadline for a lien claimant to record a notice of lien by recording a notice of completion. If the owner records a notice of completion, the claimant must record and serve the notice of lien within 40 days. (NRS 108.226(1)(a), (b).)

### AMENDING THE NOTICE OF LIEN

A claimant may amend a notice of lien at any time:

- Before trial to enforce and foreclose the lien.
- After beginning the action to enforce the lien but before entry of judgment.

(NRS 108.229.)

A claimant may amend the notice of lien to correct or clarify any statement in the notice. The claimant may amend the description of the property unless the amendment prejudices a bona fide purchaser (NRS 108.229(5)).

Serve the amended lien within 30 days of recording in the same manner as required for the original notice of lien (NRS 108.229(1)).

Any immaterial inconsistencies between the amended notice of lien and original notice of lien generally do not give a defense to a valid lien. However, a court may deem inconsistencies material and a defense to the lien, including if the statement:

- Resulted from fraud or the claimant made the statement intentionally.
- Is misleading and the adverse party is prejudiced.

(NRS 108.229(1)(a), (b).)

### WAIVER OF LIEN

In Nevada, a contractor (or subcontractor or materialman) cannot prospectively waive or modify lien rights before performing the work (or providing materials) or as part of the contract for the project (NRS 108.2453(1)).

A lienor can waive its lien rights:

- As a condition to receiving payment, provided the waiver is only effective if the lienor actually receives the payment (a conditional waiver).
- Unconditionally after receiving payment (an unconditional waiver).

A lienor may sign and deliver a lien waiver in exchange for a progress payment or a final payment.

Nevada law prescribes the forms for lien waivers and the circumstances for when to use each form. To be enforceable, the waiver must be in the statutory form. Do not alter the statutory form. (NRS 108.2457(5)(a)-(d).)

### ENFORCING THE MECHANIC'S LIEN

To enforce a mechanic's lien against the property, the claimant must bring a foreclosure action in the county where the real property is located (NRS 108.239).

The complaint should allege all of the following elements:

- The plaintiff provided labor, materials, equipment, or professional services to improve the real property.
- The existence of a written contract or the facts establishing the contract.
- The value of the work, service, materials, or equipment provided, less any payments received.
- The plaintiff was not paid.
- The plaintiff complied with all preliminary notice requirements.
- The plaintiff claims a valid lien.

Although the complaint is for foreclosure, the claimant also typically includes contract based causes of action (NRS 108.244).

The lien claimant should name as defendants the property owner, community association (if any), prime contractor, or subcontractor that failed to pay under the contract. The claimant should also name any party with a recorded interest in the property, including coordinate lien holders.

For more information on the judicial foreclosure process, see Practice Notes, Residential Foreclosures (Judicial) (NV) ([W-019-0178](#)) and Commercial Foreclosures (Judicial) (NV) ([W-019-0955](#)).

### TIME LIMITATION

A mechanic's lien is valid for six months from the recording date of the notice of lien unless the party claiming the lien:

- Commences an action to foreclose the lien by complaint, cross-complaint, or counterclaim:
  - at least 30 days after recording the notice of lien; and
  - no more than six months after recording the notice of lien.
- (NRS 108.233(1) and 108.244.)
- Records a notice of pendency of action (also known as a notice of *lis pendens*) at the same time as filing the complaint with the county recorder for the county where the real property is located (NRS 14.010 and 108.239(2)(a)).

- Publishes a notice of foreclosure at the same time as filing the complaint once a week for three consecutive weeks in a newspaper of general circulation in the county where the real property is located (NRS 108.239(2)(b)).
- Delivers the notice of foreclosure personally or by certified mail, return receipt requested, to all other parties with a recorded interest in the property.

Failure to commence a foreclosure action and file a notice of pendency within the six-month period automatically extinguishes the unreleased lien.

For a general discussion of residential and commercial foreclosure procedures in Nevada, see Practice Notes, Residential Foreclosures (Judicial) (NV) ([W-019-0178](#)), Residential Foreclosures (Nonjudicial) (NV) ([W-010-1072](#)), Commercial Foreclosures (Judicial) (NV) ([W-019-0955](#)), and Commercial Foreclosures (Nonjudicial) (NV) ([W-010-7880](#)).

### STATEMENT OF FACTS CONSTITUTING LIEN

Any other party claiming a lien may join the claimant's foreclosure action by filing a statement of facts within a reasonable time after the original claimant publishes and delivers the notice of foreclosure (NRS 108.239(3)).

The coordinate lien claimants should also record a notice of pendency.

### PRIORITY OF MECHANIC'S LIENS IN A FORECLOSURE

The priority of a mechanic's lien is determined as of the date that work commenced and visible construction begins. All mechanic's liens relate back for priority purposes to that date. (NRS 108.225 and 108.22112.) Preparatory work is not commencement of work for purposes of priority (*Byrd Underground, L.L.C. v. Angaur, L.L.C.*, 332 P.3d 273 (Nev. 2014)).

The mechanic's lien takes priority over any deed of trust or other encumbrance recorded after the construction of an improvement visibly commenced (NRS 108.225(a); *Byrd Underground, L.L.C.*, 332 P.3d 273).

### DISCHARGING A MECHANIC'S LIEN

A mechanic's lien is discharged automatically and by operation of law if the claimant fails to do both of the following within six months after recording the notice and claim of lien:

- Commence an action to enforce the lien.
- Record a notice of *lis pendens* with the county recorder for the county where the real property is located. (NRS 108.233(2); see Time Limitation.)

A mechanic's lien may also be discharged when:

- The claimant voluntarily delivers and records a discharge or release of notice of lien not less than ten days after receiving full payment (NRS 108.2437).
- The claimant (or the claimant's representative) signs on the margin of the originally recorded notice of lien and acknowledges that the mechanic's lien claim was satisfied by receiving full payment (NRS 108.2433(1)).

- The property owner or other interested party (for example, the prime contractor or the construction lender):
  - records a discharge or release of notice of lien; and
  - posts a discharge bond.
- The court issues judgment either:
  - discharging the lien; or
  - foreclosing the lien.

Nevada law prescribes the form for the release of lien. Do not alter the statutory form. (NRS 108.2437)

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