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Enforcing a Mechanics' Lien in Nevada



This guide is intended to provide an overview of what is necessary in order to perfect a mechanics' lien in Nevada.

Overview of Construction Liens

The Nevada Revised Statutes set forth the scope and requirements for perfecting a mechanics' lien. A "construction lien" is a statutory lien in favor of contractors, materialmen and others to secure payment of labor rendered and services provided. A "construction lien" is also known as a "mechanics' lien," "materialman's lien," "subcontractor's lien" and various other names. The Nevada statutory scheme, Chapter 108, refers to these liens as "mechanics' liens."

The basic premise underlying mechanics' liens is that those who have their lands improved should pay for the labor rendered and the materials delivered. All 50 states have adopted mechanics' lien laws.

Contractors and others who have lien rights can either have their attorneys prepare and serve all notices and documents necessary to perfect lien rights or train in-house personnel in the necessary procedures to properly perfect a mechanics' lien.

Who is Entitled to A Lien?

Under NRS 108.2214, any person who provides work, material, or equipment with a value of \$500.00 or more which is used in the construction, alteration, or repair of any improvement, property, or work of improvement is entitled to a mechanics' lien. The statute sets forth specifically that the following individuals are entitled to mechanics' liens:

- Anyone who provides work, material, or equipment
- Artisans
- Builders
- Contractors
- Laborers
- Lessors or renters of equipment
- Materialmen
- Miners
- Subcontractors
- Architects
- Engineers
- Land Surveyors
- Geologists

Keep in mind that if a license is required to perform the work, the contractor or professional will only be subject to the lien if he is licensed to perform the work. NRS 108.222(2).



Are You A Proper Mechanics' Lien Claimant?

You are entitled to assert a mechanics' lien if:

- Labor, services, equipment, and/or materials were furnished to a work of improvement;
- Labor was performed on the subject property;
- Materials were intended for and used on the project;
- The work of improvement is permanent; and
- The work was performed with the consent of the owner or the owner's agent.

What Property Is Subject to A Mechanics' Lien?

Mechanics' liens attach to "the property, any improvements for which the work, materials and equipment were furnished . . . and any construction disbursement account." NRS 108.222(1).

Under NRS 108.22172 "property" means:

- The land and all buildings;
- Improvements and fixtures on the land; and
- A convenient space around the land.

"Improvement" means:

- Development, enhancement, or addition to property.

Note: When dealing with multiple parcels or buildings it is important to understand that if labor or materials are (a) incorporated into more than one building, (b) located on separate legal parcels, but (c) owned by the same person, the provider may record a single lien against several buildings. *Schultz v. King*, 68 Nev. 207, 228 P.2d 401 (1951). However, the failure to allocate the lienable amount among the various buildings will result in subordination of the lien to subsequently recorded liens. NRS 108.231(3).

What is the Amount of the Lien That You Are Entitled To?

If the parties entered into a contract for a specific price, the lienable amount is the unpaid balance of the agreed price. NRS 108.222(1)(a).

If the parties did not agree to a specific price, then the lienable amount is the fair market value of the work, material or services that were provided. NRS 108.222(1)(b).

What Priority Will Your Lien Receive?

The following is the statutory priority of the various types of Mechanics' Liens:

1. Labor claims.
2. Material suppliers and lessors or equipment.
3. Other lien claimants who performed under a contract with the prime contractor or any subcontractor.
4. All other lien claimants.



Perfecting Your Mechanics' Lien

- Notice of Right to Lien a.k.a the Pre-Lien Notice.

The first notice required to perfect a lien is the notice of right to lien. All potential lien claimants must deliver a notice of right to lien. Under NRS 108.245(1), the lien claimant may provide the notice of right to lien “at any time after the first delivery of material or performance of work or services under his contract.” The notice of right to lien should be delivered promptly; it relates back, or is effective for, only 31 days before it is sent. The purpose of the notice of right to lien is to warn the owner of the property that the lien claimant may at a future date record a lien in accordance with applicable law. The notice of right to lien does not create a lien or encumbrance on the property but is required nonetheless. NRS 108.245(B).

The notice of right to lien must be delivered in person or by certified mail to the owner of the property. NRS 108.245(1).

Caution: A subcontractor has the additional requirement to notify the prime contractor in person or by certified mail. The failure to do this is grounds for disciplinary action against the subcontractor.

Exceptions:

- Those providing labor only are not required to provide a notice of right to lien.
- A prime contractor who contracts directly with the owner is not required to give the notice of right to lien.

The 15-Day Notice (Residential Construction Projects Only)

There is an additional notice required for residential construction projects. If the work of improvement involves the construction, alteration or repair of “multi-family or single family residences, including without limitation, apartment houses,” then the lien claimant must serve a 15-day notice of intent to lien.

The 15-day notice of does not have to be recorded but does have to be served by personal delivery or certified mail. NRS 108.226(6). The owner and the prime contractor must be served with the 15-day notice of intent to lien.

The 15-day notice of lien is a statutory prerequisite to recording the notice of lien.

Notice of Lien

A timely recorded Notice of Lien is required to enforce lien rights.

Under NRS 108.226(5), the notice of lien must be “substantially” in the form set forth in the statute. Specifically, the following information is required:

- The amount of the original contract;
- The total amount of all additional or charged work, materials, and equipment;
- The total amount of all payments received to date;
- The amount of the lien, after deducting all just credits and offsets;
- The name of the owner of the property;
- The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished or agreed to furnish work, materials, or equipment;



- A brief statement of the terms of payment of the lien claimant's contract; and
- A description of the property to be charged with the lien.

The Notice of Lien must be verified by the oath of the lien claimant. The Notice of Lien must be recorded within ninety (90) days after the date on which the latest of the following occurs:

- The completion of the work of improvement;
- The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or
- The last performance of work by the lien claimant for the work of improvement.

The Notice of Lien must be "served" upon the owner of the property within thirty days after recording the notice of lien. The notice must be served in the following manner:

- By delivering a copy to the owner personally; or
- If the owner is absent from his residence or place of business by mailing a copy by certified mail with a return receipt to the owner at his residence, usual place of business, or to his resident agent.

If the owner cannot be located and his residence or place of business cannot be ascertained, then service can be effected in the following ways:

- By fixing a copy in a conspicuous place on the property;
- Delivering a copy to a person residing there; and
- Mailing a copy addressed to the owner at the property address.

Note: All owners should be served, but the failure to serve all owners will not invalidate the lien. NRS 108.227(2).

Caution: **The general contractor is also required to receive the notice of lien. NRS 108.246(4).** The failure of the subcontractor to deliver such notice to the general contractor is a basis for disciplinary proceedings against the subcontractor.

Duration of the Lien

Mechanics' liens are effective for a period of 6 months from the date the notice of lien is recorded. NRS 108.233(1).

The lien will not be effective beyond six (6) months unless:

- A lawsuit has been commenced to enforce the lien; or
- The time to commence the lawsuit has been extended by a written agreement signed by the lien claimant and a person with an interest in the subject property.

Note: The agreement to extend the time to foreclose the lien will only be effective if recorded in the county recorder's office prior to the expiration of the original six-month period, must be notarized, and the agreement cannot exceed one year from the date the lien was recorded.

¹ NRS 108.227(1)

² NRS 108.227(3)



Foreclosure Actions

A lien claimant must wait 30 days from recordation of the Notice of Lien to initiate a foreclosure action. NRS 108.244. An action to foreclose the lien may not be brought any later than six months after the lien was recorded, unless the time was extended by agreement.

The following documents are required to foreclose the lien:

- The lawsuit itself, which:
 - Must be filed in a court of competent jurisdiction
 - Should include additional contract based causes of action
- A notice of pendency of the action or *lis pendens*:
 - Must be filed with the court and recorded to provide constructive notice to the work of an alleged claim or interest in the property
- A notice of foreclosure
 - Published once a week for three consecutive weeks in newspaper and published in the county where the property is located.
 - Must be delivered in person or certified mail to all other lien claimants who had liens recorded against the subject property at the time the Complaint was filed.

The Statement of Facts Constituting Lien

If you receive a notice of foreclosure of another lien claimant's lien, you are required to file your own lawsuit which is called a Statement of Facts Constituting Lien. This lien must be filed with a court within a "reasonable time" after publication or receipt of the notice of foreclosure.

Caution: The consequence for not filing a Statement of Facts Constituting Lien is that your lien rights will be waived.

You Are Entitled to Attorneys' Fees and Costs

NRS 108.237 provides that the court shall award the prevailing lien claimant the amount of her lien, her costs for preparing and recording the notice of lien, including attorneys' fees and costs. Also, the court must calculate and award interest pursuant to the contract rate or, if there is no contract, the legal rate.



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