

CHECKLIST

A GUIDE TO THE VALIDITY OF MECHANIC'S LIENS IN NEVADA

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As Nevada's economy begins to improve, it is hoped that this checklist will be helpful as a reference guide for contractors and suppliers, as they perfect their liens, and owners, as they defend against liens. However, this checklist is certainly not dispositive in determining the validity of a lien in any given case. The list is not exclusive and does not address priority issues, bankruptcy issues or other remedies.

1. Does the lien claimant qualify under NRS 108.2214 to record a notice of lien by providing “work” (NRS 108.22184), “material” (NRS 108.22144) or “equipment” (NRS 108.22124) with a value of at least \$500, with the intent to construct, alter or repair a particular “improvement?” (NRS 108.22128)
2. Is the lien claimant properly “licensed,” if performing work for which a license is required? (NRS 108.222(2))
3. If the lien claimant is a foreign corporation doing regular business in the state, has it been properly qualified and registered with the Nevada Secretary of State’s office, such that it is not prohibited from filing a lawsuit, including a lien foreclosure suit? (NRS 80.010 - 80.040, NRS 80.210)
4. Does the lien claim relate to tenant improvements/tenant build-outs?
 - a. If yes (the lien claim does relate to tenant improvements), did the tenant post security for the work of improvement under NRS 108.2403 (in the form of a surety bond or construction escrow account)?
 - b. If yes, did the landlord record a notice of non-responsibility within three days of obtaining knowledge of the construction? (NRS 108.234)¹
 - c. If the landlord recorded a timely notice of non-responsibility, is it valid, or is there an argument that the landlord does not qualify as a “disinterested owner?”
5. If the lien claimant does not have a direct contract with the property owner, did the lien claimant serve a written notice of right to lien (“pre-lien”)



- by registered or certified mail or personal service on the “owner?” (NRS 108.22148)²
- a. If yes, was it served in 31 days of the first date the subcontractor or materialman provided labor or furnished materials to the project site for which it wishes to lien? (NRS 108.245)³
 - b. If no, was the lien claimant only providing his own labor to the work of improvement?
 - c. If no, does the owner have actual knowledge that the lien claimant was providing work, materials or equipment to the work of improvement?⁴
6. If a required pre-lien notice was served, did the pre-lien notice substantially conform to the requirements of NRS 108.245(1) by setting forth:
- i. The name and address of the lien claimant;
 - ii. The nature of the materials or labor performed;
 - iii. The name of the prime contractor or subcontractor to whom the services or materials were furnished;
 - iv. The name and address of the project owner;
 - v. The name and address of the work of improvement;
 - vi. Required statement that *“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;”* and
 - vii. An optional request to be served with any recorded notice of completion? (NRS 108.228(4)(b))
7. Was the construction for a residential work of improvement and, if so, did the lien claimant timely serve a notice of intent to lien at least 15 days before recording its lien? (NRS 108.226(6))
8. Did the lien claimant record his notice of claim of mechanic’s lien within 90 days after the later of the completion of the work of improvement, the last delivery of material by the lien claimant or the last performance of labor by the lien claimant? (NRS 108.226(1))⁵
- a. If the owner recorded a “notice of completion,” did the lien claimant record its notice of lien within 40 days of the date the notice of completion was recorded? (Note: The 40 days begin after the recording of the notice of completion, not after the date on which completion is alleged to have occurred within the notice. NRS 108.226(2))
 - b. If the owner recorded a “notice of completion,” and the lien claimant did not record its notice of lien within 40 days after the notice of completion was recorded, did the owner serve a copy of the notice of completion to
- any general contractor lien claimant with whom the owner contracted directly for the work of improvement, or to any person who, before the notice was recorded, submitted a request to the owner to receive the notice (including those who requested a copy in writing)?
9. Does the recorded notice of claim of lien contain a statement of the demand after deducting all just credits and offsets? (NRS 108.226(5))
 10. Does the recorded notice of claim of lien contain the name of the owner or reputed owner of the property, if known? (NRS 108.226(5))
 11. Does the recorded notice of claim of lien contain the name of the person by whom the lien claimant was employed or to whom he furnished the material? (NRS 108.226(5))
 12. Does the recorded notice of claim of lien contain a brief statement of the terms of payment of the lien claimant’s contract? (NRS 108.226(5))
 13. Does the recorded notice of claim of lien contain a description of the property to be charged with the lien sufficient to identify the property (i.e., address or apn #)? (NRS 108.226(5))
 14. Has the notice of claim of lien been properly verified under NRS 108.226(5)?⁶
 15. Has the notice of claim of lien been served upon the record owner of the property within 30 days after it was recorded under NRS 108.227, by delivering a copy to the record owner personally or by leaving a copy with some person of suitable age and discretion at the owner’s place of residence or his usual place of business, and also mailing a copy, addressed to the record owner, at his place of residence or place of business, or if such place of residence or business cannot be ascertained or a person of suitable age or discretion cannot be found there, by affixing a copy in a conspicuous place on the property and delivering a copy to a person there residing, if they can be found, and by mailing a copy addressed to the record owner at the place where the property is situated? (NRS 108.227) Does the lien claimant have any record of having performed this task?
 16. Are the contents of the notice of claim of lien (i.e., the name of the owner, the description of the property and the amount of the lien) factually correct?

continued on page 12

In addition to serving the owner with a required pre-lien notice, the lien claimant must also timely and properly serve a copy of the pre-lien written notice on the prime contractor.

A GUIDE TO THE VALIDITY OF MECHANIC'S LIENS IN NEVADA

continued from page 11

17. Was any challenge to this lien asserted under NRS 108.2275?
18. Did the lien claimant wait at least 30 days after recording his notice of claim of lien before filing a lien foreclosure action? (NRS 108.244)
19. Did the lien claimant file his lien foreclosure action within six months of recording his notice of claim of lien? (NRS 108.239)
20. Was the construction lender named as a defendant in any lien foreclosure action filed by this claimant, so as to preserve priority claims, if any, against the lender?
21. Did the lien claimant record a Lis Pendens in conjunction with the filing of his lien foreclosure lawsuit? (NRS 108.239(2)(a))

Many pre-purchased lien forms do not contain a proper verification.

22. Did the lien claimant properly file and publish a general notice to other lien claimants and serve such a notice upon known lien claimants of record to file their Statement of Facts Constituting Lien Claim? (Or, if the lien claimant was the recipient of such a notice, did the lien claimant timely file, within a reasonable time after the last date of publication, a Statement of Facts within the action in regard to which such notices were served and published?) (NRS 108.239(2) and (3))

23. Has the lien been bonded around and released? (NRS 108.2413-108.2425) ■

- 1 A lessor who records within three days of the execution of the lease is deemed to have provided timely notice as to the construction known to lessor at the time the lease was executed. If recorded later, the owner/lessor would presumably have the difficult burden of proving, without any presumption in his favor, that the date on which he obtained knowledge of the construction was less than three days before he recorded.
- 2 In addition to serving the owner with a required pre-lien notice, the lien claimant must also timely and properly also serve a copy of the pre-lien written notice on the prime contractor. However, failing to do so will not defeat the lien claimant's right to a mechanics lien. (NRS 108.245 (1))
- 3 Even if not provided within 31 days of the commencement date, a lien claimant may still preserve lien rights going forward from 31 days prior to the date on which it does finally serve such a pre-lien notice.
- 4 *Hardy Companies, Inc. v. SNMARK*, 126 Nev.Adv. Op. 49, 245 P.3d 1149 (2010).

- 5 a. If the project consisted of constructing more than one separate building, for example, a structure with separate parking garages, a multi-building complex or a hotel and casino, and if each building is constructed pursuant to a separate contract, each building is deemed to be a separate work of improvement upon the completion of which the period for recording a mechanic's lien thereon begins to run.
b. The completion of the work of improvement occurs upon the following events:
 1. The occupation or use of a building, improvement or structure by the owner, his agent or his representative, accompanied by cessation of labor thereon;
 2. The acceptance by the owner, his agent or his representative of the building, improvement or structure;
 3. The cessation of labor, for 30 days, upon any building, improvement or structure, or upon the alteration, addition to or repair thereof, so long as a notice of completion is recorded and served, and work is not re-commenced under the same contract. (NRS 108.22116)

Thus, the fact that a claimant has gone back to the property to do some punch list work or warranty items does not necessarily extend the time for recording a mechanic's lien if substantial completion occurred prior thereto.

- 6 a. Many pre-purchased lien forms do not contain a proper verification.
b. A properly verified lien will generally have two signatures: one signature under the statement of lien information and a second signature beneath a verification paragraph in which the mechanic's lien claimant, or the person signing on his behalf, attests, under oath and penalty of perjury, to the truthfulness and validity of the information contained in the lien.
c. In addition, if the jurat of the notary only indicates an acknowledgment as to who signed the documents, but does not indicate that the signer has "sworn" to the validity of the information contained, the notice of claim of lien may be invalid.



MARK ALBRIGHT has published widely on a variety of legal topics, including articles in the *Brigham Young University Law Review*, *Nevada Lawyer*, *Nevada Civil Practice Manual*, the Clark County Bar's *Communiqué* and *Construction Company Strategist*. He was awarded Martindale-Hubble's highest AV rating and AVVO's highest Superb rating, and has been recognized by Who's Who in American Law; this year the Litigation Counsel of America granted him a Fellowship as one of top one-half percent of attorneys.