



HELPING NEVADA'S CONTRACTORS GET PAID THROUGH NEVADA'S PROMPT PAYMENT ACT AND LIEN FORECLOSURE CLAIMS

BY JOHN MOORE, ESQ.

For many years after passing the Nevada Bar Exam, when I introduced myself at social gatherings, I identified myself as an attorney. Typical acknowledgments that I was “one of them” included eye-rolls, poorly delivered lawyer jokes and the often seemingly obligatory defamation of lawyers in general. By introducing myself as an attorney, the people I met knew (or thought they knew) what I was, but because I only identified myself as an attorney, they did not know what I did for a living. Most of these new acquaintances did not care to dig behind the label of attorney to discover what I really did for my clients.

So, about three years ago, I changed the way I introduce myself. Now, when asked what I do for a living, I state that “I help contractors get paid.” The change in the response I receive due to this minor modification in how I identify myself has been stark. Gone are the clunky lawyer jokes and the eye-rolls. Now, often

those I meet at social gatherings declare “your work must be very rewarding,” or say “you must be very busy.” Some of these new people I meet don’t even suspect that I am “an attorney.”

Helping contractors get paid in this improving, yet not fully healthy, economy is indeed rewarding, but the work is also increasingly complex. Major hotel resort and casino projects in northern Nevada, such as the Hard Rock Casino and the Cal Neva Lodge and Casino, both at Lake Tahoe, have been marred with non-payment issues, threatened trustee’s foreclosure sales, potential bankruptcy and other delays in payment. These delays in receiving payment for smaller contractors, who form a significant part of our economy’s backbone, are often debilitating and business-threatening. Contractors of all sizes need to understand the options available to them, but many are unaware of the steps they can take toward securing payment.

In an industry where the bottom line is frequently tied to relationships as well as results, many contractors who understand the basics of Nevada’s Prompt Payment Act and Nevada’s mechanic’s lien statutes under-utilize these portions of Nevada law to keep their customers happy, with the hope that additional work will develop as a result of these relationships. Yet, when faced with mounting delays in payment coupled with empty promises, contractors must utilize these laws effectively and promptly to secure payment for themselves and for their lower-tiered contractors and suppliers.

Nevada's Prompt Payment Act— An Underutilized Tool

I am surprised to learn that many contractors, when they are seeking assistance in collecting fees owed, have never heard of Nevada's Prompt Payment Act. This needs to change. Nevada's Prompt Payment Act offers several tools to help contractors of all sizes get paid for their work, but many contractors are not using those tools.

The first tool available to both general contractors and lower-tiered contractors under Nevada's Prompt Payment Act is the Stop Work Notice. In accordance with NRS 624.610, a general contractor may stop work on a project if the contractor has not been paid within specific time frames set by statute, by first giving notice to the owner of the construction project that the general contractor will stop work on the project 10 days before actually stopping work, unless the general contractor is paid during that 10-day period. If the owner has not paid the general contractor for the work performed during this 10-day period, the general contractor may then stop work on the project.¹ After stopping work on a project, if payment is still not forthcoming, the general contractor may terminate the contract by providing notice of termination 15 days prior to terminating the contract.² Once the contract is terminated, the general contractor may sue for work performed, the balance of expected profit lost as a result of stopping work, interest on amounts owed, and attorney's fees and costs associated with bringing an action to recover damages permitted under NRS 624.610.

Under NRS 624.626, a lower-tiered contractor may notify a general contractor of the lower-tiered contractor's intent to stop work if the lower-tiered contractor is not paid in accordance with a contractual schedule of payments or, if there is no schedule of payments, within 30 days of submitting a request for payment to the general contractor or 10 days after the general contractor receives payment from the owner, whichever is earliest.³ The lower-tiered contractor must provide the general contractor with 10-days' notice of the lower-tiered contractor's intent to stop work.⁴ After stopping work on the project, if payment is not forthcoming, the lower-tiered contractor may terminate its contract with the general contractor and seek recovery against the general contractor for lost profit, the cost of the work performed and interest on amounts owed, as well as attorney's fees and costs incurred to pursue a recovery under the Prompt Payment Act.⁵

Under these provisions of Nevada's Prompt Payment Act, contractors of all sizes can stop projects from turning bad almost immediately after payment issues arise on any project. Yet the powerful provisions of the act are infrequently used by Nevada's contractors, who either do not understand the provisions of the act or do not wish to use these provisions in an effort to preserve client relationships. In this improving economic environment, Nevada's contractors need to effectively rely upon Nevada's Prompt Payment Act in order to apply the pressure necessary to ensure that they receive payment for work already performed.

Mechanic's Lien Foreclosure Claims

To strengthen the effect of pursuing remedies available under Nevada's Prompt Payment Act, general contractors and lower-tiered contractors also need to rely on Nevada's

mechanic's lien statutes. Nevada's mechanic's lien statutes should be used hand-in-hand with Nevada's Prompt Payment Act. If used together, Prompt Payment Act claims and mechanic's lien claims can bolster payment expectations.

Mechanic's liens are meant to protect a lien claimant who provides work, materials or equipment with a value of \$500 or more for the improvement of property.⁶ The term "lien claimant" is broadly defined by statute and includes artisans, builders, contractors, laborers, lessors or renters of equipment, material suppliers, miners, subcontractors, engineers and architects, among others.⁷

According to NRS 108.245, every lien claimant, other than one who has a direct contract with the owner, must provide a Notice of Right to Lien, or a pre-lien. This notice should be given at the commencement of construction, or no later than 31 days after commencing construction.⁸

According to NRS 108.226(6), 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 also serve a 15-day Notice of Intent to Lien. This notice must be served before a Notice of Lien can be recorded, but only in residential construction.

NRS 108.226(2) sets forth the content of the Notice of Lien. It must include certain items, including the amount of the original contract, the total amount of any changes to the contract, the amount of payments made on the contract, the amount of the lien after deducting just credits and offsets, the name of the owner if

continued on page 23

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known, the name of the person with whom the lien claimant has a contract, a brief statement of the terms governing payment and a description of the property to be charged with the lien. The Notice of Lien must also be verified by the oath of the lien claimant or some other person.

Under NRS 108.226(1)(b), the time to record the lien may vary. Usually, recording is within 90 days of completion of the work of improvement, the last delivery of materials to the site of the project, the last furnishing of equipment for use on the project or the last performance of work by the lien claimant, whichever occurs last. This is a great benefit to many lien claimants, because often a lien claimant performs work, delivers materials or furnishes equipment to a project several months before the project is actually completed.

Once a mechanic's lien is recorded, a general contractor or lower-tiered contractor must bring a foreclosure action within the time frame prescribed by statute, which is outlined in NRS 108.233. Under this statute, the failure to commence litigation within six months will make the lien ineffective. To avoid this problem, the lien claimant may seek an extension of the lien from the owner of the property under NRS 108.233(1)(b). The extension must be in writing, signed by the owner and recorded within the six-month period noted above.

Owners infrequently agree to execute a lien extension. Accordingly, general contractors and lower-tiered contractors should expect that they will need to pursue their lien-foreclosure claims within six months of recording the lien in question.

Though Nevada's economy is on the upswing, payment issues still plague construction projects. A healthy understanding and the proper use of Nevada's Prompt Payment Act, together with Nevada's mechanic's lien statutes, will go a long way toward helping contractors get the payment they have earned. **NL**

1. NRS 624.610(1)
2. NRS 624.610(2)
3. NRS 624.624(b)
4. NRS 624.626(1)
5. NRS 624.626(2)
6. NRS 108.2214(1)
7. *Id.*
8. Pre-lien notices that are given more than 31 days after commencement of construction are still valid, but such notices will not capture all work performed on a project, only the work performed 31 days prior to the giving of the notice. NRS 108.245(6)



JOHN MOORE has practiced law in Nevada since graduating from the University of the Pacific, McGeorge School of Law, in 2003. Prior to attending McGeorge, John graduated from Brigham Young University in 2000. Moore has been helping his contracting clients receive payment for most of his career, and he founded Moore Law Group, PC in 2014. He can be reached at john@moore-lawgroup.com.

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