

**PROPOSED REGULATION OF THE
STATE CONTRACTORS' BOARD**

LCB File No. R185-97

December 5, 1997

EXPLANATION – Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§2 and 3, NRS 624.100, 624.160 and 624.321 (§2, chapter 556, Statutes of Nevada 1997, at page 2686).

Section 1. Chapter 624 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *The informational form that a general building contractor is required to provide regarding mechanics' and materialmen's liens pursuant to paragraph (b) of subsection 3 of NRS 624.321 to the owner of a single-family residence with whom he has contracted must be as follows:*

'NOTICE TO OWNER'

Pursuant to NRS 108.221 to 108.246, inclusive, a contractor, subcontractor, laborer, supplier of materials or other person or entity who:

(1) Performs work or furnishes materials of the value of \$500.00 or more to improve the value of your property; and

(2) Is not paid for the work or materials, has a right to place a lien on your property on which the work was performed and to sue you in court to obtain payment.

This means that after a court hearing, your property could be sold by an officer of the court and the proceeds of the sale used to satisfy the amount you owe. If you did not ask for and receive releases of liens from the contractors' subcontractors, laborers or suppliers of materials, a lien may be placed on your property or you may be sued even if you have paid your contractor in full.

To preserve their right to file a claim or lien against your property, certain claimants such as subcontractors, laborers and suppliers of materials are each required to provide you with a document called a “preliminary or pre-lien notice.” A preliminary or pre-lien notice is not a lien against your property. Its purpose is to notify you regarding persons or entities who may have a right to file a lien or claim against your property if they are not paid. To perfect their lien rights, contractors, subcontractors, laborers and suppliers of materials must file mechanics’ liens with the county recorder, which then become recorded liens against your property. Generally, the maximum time allowed for filing a mechanics’ lien against your property is 90 days after substantial completion of your project.

TO ENSURE EXTRA PROTECTION FOR YOURSELF AND YOUR PROPERTY, YOU MAY WISH TO TAKE ONE OR MORE OF THE FOLLOWING STEPS:

- (1) Request that your contractor supply you with a payment and performance bond***, which guarantees completion of your project and payment of the subcontractors, laborers and suppliers of materials who work on the project.
This payment and performance bond is different from the surety bond that a contractor must file for licensure pursuant to NRS 624.270. A payment and performance bond provides that if the contractor does not complete the project, the bonding company will pay damages up to the amount of the bond. This payment and performance bond as well as a copy of the construction contract should be filed with the county recorder for your further protection. There is a fee for a payment and performance bond. This fee is usually equal to between 1 and 6 percent of the amount of the contract, depending on the ability of the contractor to be bonded.
- (2) Require that payments be made directly to subcontractors, laborers and suppliers of materials through a mechanism that controls payment for construction.*** *In the area in which you live, services to control the funding of your project may be available, for a fee, to control payment of your contractor by the use of vouchers or other means. These services may also provide you with waivers of liens and other forms of protection.*
- (3) Issue joint checks for payment***, made payable to both your contractor and the subcontractors, laborers and suppliers of materials who were involved in the project or portion of the project for which payment is due and who sent a preliminary or pre-lien notice to you. *Those persons or entities have indicated that they may have the right to place a lien on your property, and therefore you need to protect yourself. Making checks jointly payable will help to ensure that all persons due payment are actually paid.*
- (4) Require your contractor to provide you with unconditional “waiver and***

release” (lien release) forms so that when you make a payment on any completed phase of your project, each subcontractor, laborer and supplier of materials involved in that portion of the work for which the payment was made can sign the waiver and release forms. This protects you from liability to them for work for which they have already been paid.

- Some stationery stores sell waiver and release forms if your contractor does not have them. The subcontractors, laborers and suppliers of materials from whom you obtain releases should be those persons or entities who have filed preliminary or pre-lien notices with you. If you are not certain which subcontractors, laborers and suppliers of materials are working on your project, you may obtain a list from your contractor. In regard to projects involving improvements to a single-family residence or a duplex owned by an individual, the persons signing these releases lose their right to file a mechanics’ lien against your property. In regard to other types of projects, obtaining such releases may still be important, but may not provide complete protection.
- To protect yourself by use of a waiver and release form, you must be certain that all subcontractors, laborers and suppliers of materials who work on your project sign a waiver and release form. If a mechanics’ lien has already been filed against your property, in most cases the lien can only be released voluntarily by a recorded “release of mechanics’ lien,” which is signed by the person or entity that filed the mechanics’ lien against your property. However, if the person or entity that filed the lien fails to bring an action to enforce the lien in a timely manner, the lien may be removed without voluntary action on the part of that person or entity. You should not make final payment on your project until all mechanics’ liens that are filed against your property have been removed.

TO PROTECT YOURSELF FULLY, YOU SHOULD CONSULT AN ATTORNEY:

- (1) BEFORE YOU SIGN A CONSTRUCTION CONTRACT; OR**
- (2) IF A LIEN IS FILED AGAINST YOUR PROPERTY.**

Sec. 3. *The informational form that a general building contractor is required to provide regarding contractors pursuant to paragraph (a) of subsection 3 of NRS 624.321 to the owner of a single-family residence with whom he has contracted must be as follows:*

Contractors are required by law to be licensed and regulated by the State Contractors' Board. The State Contractors' Board has jurisdiction to investigate complaints that are filed against contractors. Any questions concerning a contractor may be referred to the State Contractors' Board at:

- (1) 70 Linden Street
Reno, Nevada 89502
(702) 688-1141; or*

- (2) 4220 South Maryland Parkway
Suite 800 D
Las Vegas, Nevada 89119
(702) 486-1100.*

The law of this state requires that a person or entity who enters into a contract to perform construction work be properly licensed by the State Contractors' Board for the category of work that the person or entity intends to perform. Laws regulating licensed contractors are designed to protect the public. If you contract with a person or entity who is not licensed to perform construction work, your remedies against that person or entity may be limited to a suit in civil court. You may be liable for damages arising out of any injuries to an unlicensed contractor or that contractors' employees, as well as withholding taxes, contributions pursuant to the Federal Insurance Contributions Act and contributions for industrial insurance and unemployment compensation. In addition, you must comply with other applicable state and federal laws regarding employment. Finally, you should be aware that construction performed on your property must comply with all applicable laws, ordinances, building codes and regulations.

A Contractor is required to include his license number on all of his advertising, vehicles, bids and contracts. You may contact the State Contractors' Board to find out if a contractor has a valid license and, if so, the status of that license. The board has complete information on the status of all licensed contractors in the State of Nevada. This information is available through the "voice response system" of the State Contractors' Board. However, if you wish to obtain specific information about complaints that have been filed against a contractor, such information must be requested from the board in writing.