

Client Alert

Nevada Prompt Pay Statute

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Following the trend of most states, Nevada recently enacted its version of Prompt Payment Statute applicable to Construction Contracts for private projects performed within the state. These requirements are mandatory and may not be waived or modified by any provision in a contract. Here is what you need to know:

Owner/Contractor Relationship

Payment to Contractors (NRS 624.609 and 624.620)

An owner must pay a contractor as follows:

1. If the contract is in writing and contains a schedule for payments, on or before the date such payments are due for the schedule of payments.
2. If no schedule for payments exists or the contract is oral, within twenty-one (21) days after the date the contractor submits a progress or retainage bill for same.
3. The unpaid contract balance within thirty (30) days of the date the owner first begins to use or occupy the project, or the date the project first becomes available for its intended use.

Monies an Owner May Withhold (NRS 624.309 and 624.620)

1. The retention amount authorized by contract;
2. The value of any work, labor, materials and/or equipment that has not been furnished for which payment is being sought;
3. The costs reasonably necessary to correct or repair any work that is the subject of a progress or retainage bill, but only to the extent that such costs exceed fifty-percent (50%) of the amount of retention being withheld; and/or

4. The amount the owner may reasonably be liable for and which the owner has paid or is required to pay on behalf of the contractor or his subcontractors, as a result of a demand for payment from an official state agency or employee benefit trust fund.

Notice of Withholding (NRS 624.609)

On or before the date a payment is due to the contractor, the owner must give the contractor written notice of any withholding.

The written notice must:

1. Identify the amount to be withheld;
2. Identify the reason for the withholding, including a specific reference to the relevant contract provision; and
3. Be signed by an authorized representative of the owner.

Notice of Correction (NRS 624.609 and 624.620)

The contractor must give the owner written notice of the correction of the condition.

The written notice must:

1. Identify the scope and manner of the correction; and
2. Be signed by an authorized representative of the contractor.

Owner's Receipt of Notice of Correction (NRS 624.609 and 624.620)

Upon receipt of a contractor's signed notice and prior to the date of the contractor's next progress or retainage payment is due, the owner must:

1. Pay to the contractor the amount withheld for the corrected condition; or
2. Object in writing to the scope and manner of all or a portion of the correction.

Owner's Failure to Timely Give Notice of Withholding or to Pay (NRS 624.610 and 624.622):

When an owner fails to times give notice of a withholding or to pay, a contractor may:

1. Upon giving ten (10) days written notice to the owner, stop work; and
2. Upon giving fifteen (15) days written notice to the owner after stopping work, terminate the contract. If the contractor is paid prior to the termination date of the contact, the contractor shall resume work.

A contractor must provide his subcontractors with a copy of all stop work and termination notices the contractor gives to the owner.

Damages a Contractor May Recover If Contractor Terminates: (NRS 624.622 and 624.610):

Should the contractor terminate his contract, a contractor is entitled to be awarded:

1. The cost of the work, material, equipment and services furnished by and through the contractor prior to the termination date, including profit and overhead;
2. The profit the contractor and his subcontractors would have received had the contract been fully performed;
3. Interest; plus
4. The reasonable costs of collection of the amount due.

If the contractor is deemed to have stopped work or terminated the contract "without reasonable cause", the court may award attorneys' fees and costs to the owner.

Neither the contractor nor his subcontractors can be held liable for any delay or delay damages the owner may suffer if:

1. The contractors or his subcontractor stopped work for "reasonable cause"; and
2. The contractors or his subcontractors stopped work in accordance with statute.

Lien Releases (NRS 624.609 and 624.620):

An owner may withhold payment pending receipt of lien releases from the contractor and his subcontractors and

suppliers. The lien releases must conform to the statutory forms codified at NRS 108.2457 and must be: (1) conditioned on the payment check clearing the bank upon which it was drawn and only become unconditional upon receipt of payment; and (2) limited to the amount of the payment received.

Waiver or Modification of these Statutory Provisions Prohibited (NRS 624.610, 624.622, 624.626 and 624.628):

Nevada Statute prohibits the waiver or modification of a right, obligation or liability required by this Chapter and voids any provision in a contract that attempts to do so.

The Private Prompt Pay Act is in additional to all other rights and remedies a contractor may possess at law or in equity and does not impair such rights and remedies.

Contractor/Subcontractor Relationship

Payment to Subcontractors (NRS 624.624)

A contractor must pay a lower-tiered subcontractor as follows:

1. If the subcontract is in writing and contains a schedule for payments, the earlier of:
 - (a) The date the payment is due; or
 - (b) Within ten (10) days of the date the contractor receives payment for all or a portion of the subcontractor's work and materials.
2. If no schedule for payments exists or the contract is oral, the earlier of:
 - (a) Thirty (30) days of the date the subcontractor submits a progress or retainage payment bill; or
 - (b) Within ten (10) days of the date the contractor receives payment for all or a portion of the subcontractor's work and materials.

Monies a Contractor May Withhold (NRS 624.624):

1. The retention amount authorized by subcontract;
2. The value of any work, labor, materials and/or equipment that has not been furnished for which payment is being sought;
3. The costs reasonably necessary to correct or repair any work that is the subject of a progress or retainage bill, but only to the extent that such costs exceed fifty-percent (50%) of the amount of retention being withheld; and/or

4. The amount the contractor may reasonably be liable for and which the contractor has paid or is required to pay on behalf of the subcontractor or his lower-tiered subcontractors, as a result of a demand for payment from an official state agency or employee benefit trust fund.

Notice of Withholding (NRS 624.624)

On or before the date a payment is due a subcontractor, the contractor must give the subcontractor written notice of any withholding.

The written notice must:

1. Identify the amount to be withheld;
2. Identify the reason for the withholding, including a specific reference to the relevant subcontract provision; and
3. Be signed by an authorized representative of the contractor.

Notice of Correction (NRS 624.624)

The subcontractor must give the contractor written notice of the correction of the condition.

The written notice must:

1. Identify the scope and manner of the correction; and
2. Be signed by an authorized representative of the subcontractor.

Contractor's Receipt of Notice of Correction (NRS 624.624)

Upon receipt of a subcontractor's signed notice and prior to the date of the subcontractor's next progress or retainage payment is due, the contractor must:

1. Pay to the subcontractor the amount withheld for the corrected condition; or
2. Object in writing to the scope and manner of all or a portion of the correction.

Contractor's Failure to Timely Give Notice of Withholding or to Pay (NRS 624.626 and 624.628)

When a contractor fails to times give notice of a withholding or to pay, a subcontractor may:

1. Stop work. A subcontractor may stop work upon giving ten (10) days written notice to the contractor, if the contractor fails to:
 - (a) Timely give notice of a withholding;

(b) Pay the subcontractor as discussed above; or

(c) Pay the subcontractor within 45 days after the 25th day of the month in which the subcontractor submits a progress or retainage bill (even if the contractor has not been paid and/or the subcontract contains a "paid-if-paid" or "paid-when-paid" clause).

2. Terminate the Subcontract. After stopping work for either (a) or (b) above, a subcontractor may terminate his subcontract upon giving the contractor fifteen (15) days written notice. If the subcontractor is paid prior to the termination date of the subcontract, the subcontractor shall resume his work.

A subcontractor cannot terminate the subcontract solely because the contractor fails to pay the subcontractor with 45 days after the 25th day of the month in which the subcontractor submits a progress or retainage bill.

A subcontractor must provide all lower-tiered subcontractors, all higher-tiered subcontractors, the contractor and the owner with a copy of all stop work and termination notices he may give to the contractor.

Damages a Subcontractor May Recover If Subcontractor Terminates (NRS 624.626)

Should the subcontractor terminate his subcontract, the subcontractor is entitled to be awarded:

1. The cost of the work, material, equipment and services furnished by and through the subcontractor prior to the termination date, including profit and overhead;
2. The profit the subcontractor and his lower-tiered subcontractors would have received had the subcontract been fully performed;
3. Interest; plus
4. The reasonable costs of collection of the amount due.

If the subcontractor is deemed to have stopped work or terminated the contract "without reasonable cause", the court may award attorneys' fees and costs to the contractor.

Neither the subcontractor nor his lower-tiered subcontractors can be held liable for any delay or delay damages the contractor or the owner may suffer if:

1. The subcontractor or his lower-tiered subcontractor stopped work for "reasonable cause"; and
2. The subcontractor or his lowered-tiered subcontractors stopped work in accordance with statute.

Lien Releases (NRS 624.624)

A contractor may withhold payment pending receipt of lien releases from the subcontractor and his lower-tiered subcontractors and suppliers. The lien releases must conform to the statutory forms codified at NRS 108.2457 and must be: (1) conditioned on the payment check clearing the bank upon which it was drawn and only become unconditional upon receipt of payment; and (2) limited to the amount of the payment received.

Waiver or Modification of these Statutory Provisions Prohibited (NRS 624.626 and NRS 624.628):

Nevada Statute prohibits the waiver or modification of a right, obligation or liability required by this Chapter and voids any provision that attempts to do so.

The Private Prompt Pay Act is in addition to all other rights and remedies a contractor may possess at law or in equity and does not impair such rights and remedies.



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