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**SUMMARY FOR ENFORCING CLAIMS
ON PRIVATE AND PUBLIC PROJECTS
IN NEVADA**

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SHORT SUMMARY FOR ENFORCING CLAIMS
ON PRIVATE AND PUBLIC JOBS

MECHANICS' LIEN (PRIVATE WORK)

1. Preliminary Notice must be sent to owner, contractor and lender within 31 days after first delivery of materials or labor.
2. Record lien in county recorder's office within 90 days of completion of work of improvement, before lapse of 90 days after last delivery of materials by lien claimant, or before lapse of 90 days after last performance of labor by lien claimant, whichever time period is last to expire.
3. If a notice of completion is filed, the notice of lien must be recorded within 40 days after recording of notice of completion.
4. Bring suit to foreclose lien after 30 days of recording of lien and before expiration of 6 months after lien recorded.

PAYMENT BOND (PUBLIC WORK)

1. Serve Notice to Surety on prime contractor and bonding company within 30 days after furnishing the first of such materials or labor and giving second notice to prime contractor within 90 days after performed last of the labor or last of the materials for which he claims payment.
2. Each written notice shall be made by registered or certified mail to contractor at any place he maintains his office or at his residence.
3. Bring suit from time period of 90 days after performed last of such labor or materials up to 1 year from date claimant performed last of the labor or furnished the last of the materials for which payment is sought.

MILLER ACT (FEDERAL PUBLIC JOBS)

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1. Serve 90 day Bond Notice on prime within 90 days of last delivery.
2. Bring suit within one year after last delivery.

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PROCEDURAL STEPS FOR ENFORCING MECHANIC'S LIENS
AND BOND RIGHTS

CHECKLIST

I. MECHANIC'S LIEN

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A. 31-DAY NOTICE (NRS §108.245)

1. When Given:

Must be given within 31 days after claimant first furnishes labor, services, equipment or material to the job site. (NRS§108.245).

2. By Whom Given:

All persons claiming a lien except the prime contractor must give the notice. (NRS §108.245(5))

3. To Whom Given:

Everyone must give the notice to:

- a) Owner or reputed owner;
- b) Original contractor or reputed contractor.

4. Where Given:

The notice may be served at one of the following locations of the person to be served if that person resides in Nevada:

- a) Residence;
- b) Place of Business;
- c) Address shown on building permit.

5. How Given:

- a) Personal Service;

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- b) Certified mail.

NOTE: When the notice is sent by certified mail, service is complete when mailed. Therefore, this method of service is recommended. (NRS §108.245(1))

6. Contents of the Notice:

- a) A general description of the labor, services, equipment or materials furnished and amount attributable to the project.
- b) The name and address of the person giving the notice.
- c) The name of the person who contracted for purchase of the labor, services, equipment or materials.
- d) A description of the job site sufficient to identify it.

7. Proof of Service of Preliminary Notice:

- a) If served by mail, then by proof of service affidavit accompanied by the return receipt of certified record of delivery and receipt maintained by the post office showing, the date of delivery and to whom delivered or, in the event of non-delivery, the return envelope itself.
- b) If served personally, then by proof of service affidavit.
- c) The "proof of service affidavit" is an affidavit of the person making service showing:
 - (1) Time of service;
 - (2) Place of service;

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- (3) Manner of service;

- (4) Fact showing service was made in accordance with NRS §108.245;
and

- (5) Name and address of person served and title and capacity in which
he was served, if appropriate. (NRS §108.245).

B. RECORDING THE LIEN

- 1. Notice of Completion:
 - a) Where a valid notice of completion has been recorded, the person
has 40 days to record. (NRS §108.266(2))

- 2. No Notice of Completion, But Actual Completion:
 - a) All persons have 90 days from actual completion to record.

- 3. If there is no notice of completion and no actual completion of the job, the
following are deemed equivalents of completion and all persons have 90
days from the following events to record their liens:
 - a) Occupation and use of the work of improvement by the owner or
his agent accompanied by a cessation of labor. (NRS §108.226(3)
(a))

 - b) Acceptance of the work of improvement by the owner or his agent.
(NRS §108.226(3) (b))

 - c) A cessation of labor for a continuous period of 30 days.
 - (1) (NRS §108.226(3) (c))

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4. Notice of Cessation of Labor:
 - a) If the owner records a notice of cessation of labor (after a 30-day cessation) then this is the same as a notice of completion.

5. Where recorded:
 - a) In the office of the county recorder where the real property is located.

6. Contents of Mechanic's Lien (CC §3084):
 - a) A statement of claimant's demand, after deducting, all just credits and offsets.
 - b) Name of owner or reputed owner, if known.
 - c) The name of the person by whom he was employed or to whom he furnished the material. (Note: Different from California.)
 - d) A statement of the terms, time given, and conditions of his contract. (Note: Different from California.)
 - e) A description of the job site sufficient for identification.

NOTE: The lien must be signed and verified by the claimant or his agent. It need not be acknowledged.

7. Suit:
 - a) Must be commenced within 6 months after the lien is recorded in the county where the real property is located. (NRS §108.233). The time to sue may be extended for up to one year from completion, provided a

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proper extension of time to foreclose is recorded within 6 months of recording the lien. (NRS §108.233)

b) The suit should name as defendants all parties who have any interest in the property. Suggested sources of names: lot book report, mechanic's lien guaranty or preliminary title report.

PROCEDURAL STEPS FOR ENFORCING BOND
RIGHTS ON STATE PUBLIC WORKS

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II. LABOR AND MATERIAL BOND

A. NOTICE TO PRINCIPAL AND SURETY (NRS §339.035)

1. Who Gives:

All claimants except laborers, trust funds and claimants with a direct contractual relationship with the original contractor.

2. When Given:

Within 30 days after furnishing materials or first of such labor to contractor and letter giving written notice of non-payment within 90 days of completion of work.

3. To Whom Given:

To the Surety and General Contractor.

4. How Given:

Personal service or registered or certified mail. (NRS §339.035).

5. Where Given:

Where surety or general contractor maintains an office or conducts business or at his place of residence. (NRS §339.035)

6. Contents:

The name of the claimant, the kind of labor, services, equipment or material furnished by the claimants, the amount claimed due, and the name of the person to or for whom the labor, services, equipment or material were furnished. (NRS §339.035)

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B. SUIT

In order to perfect the claim on the labor and material bond, the claimant must file suit within one year from the date on which the claimant performed the last of the labor or furnished the last of the materials for the payment of which action is brought. (NRS §339.055)

**PROCEDURAL STEPS TO ENFORCE CLAIM
ON MILLER ACT BOND**

There are two procedural steps to enforcing a claim under the Miller Act Bond.

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1. Preliminary Notice.
2. Suit on the bond.

If the claimant does not have a direct contractual relationship with the prime contractor, then the claimant must, as a condition precedent to his right to sue on the bond, send a notice in writing to the prime contractor by registered mail within 90 days after the claimant last furnished labor or material to the job. Conversely, if you have a direct contractual relationship with the prime contractor, then no preliminary notice is necessary.

If you are not paid, then suit on the Miller Act bond must be brought in the U.S. Federal District Court where the job is located within one year after your last furnishing of labor and material.

U.S.C. 270B(b).

It is clear under the cases interpreting the Miller Act, that if you are beyond the Third Tier on the job you cannot recover under the Miller Act. Clifford F. MacEvoy Co. v. U.S. ex. rel. Calvin Tomfine Co. (1944) 322 U.S. 102)

Example:

Prime Contractor		First Tier
Subcontractor		Second Tier
Subcontractor	Material Supplier	Third Tier (covered)
Subcontractor or Material Supplier		Fourth Tier (cannot recover)

If you are relying on the Miller Act bond in extending credit on a federal construction project, then you must take care that your customer is either the prime contractor or is a person with a contractual relationship with the prime contractor. •

In summary:

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1. The Miller Act applies to federal construction projects.
2. If you do not have a direct contractual relationship with the prime contractor, you must give written notice of your claim by registered mail to the prime contractor within 90 days of your last furnishing of labor or material to the job.
3. Suit on the bond must be brought in federal court within one year after last furnishing of labor or material.