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## Compliance Is Key For Nevada Construction Contracts

Law360, New York (March 23, 2017, 11:28 AM EDT) -- Navigating Nevada law can be an interesting undertaking for those not experienced with the unique laws of the state. This can be especially true for those attempting to move forward with a construction project in Nevada due to the many distinctive state laws that apply to construction contracts. There is currently a great deal of construction work coming to Nevada from companies around the country and the world that do not have experience building in Nevada, making this issue more important than ever.



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When beginning a construction project in Nevada, it should be clear that standard form construction contracts, or even custom contracts developed and used in other states, simply will not comply with Nevada law. Therefore, those contracts will need to be modified to be in compliance with Nevada law.

It is particularly important to note several key areas of Nevada law before preparing any construction contract for work in the State. Failure to comply with these statutes can create unnecessary delays and costs for a construction contract from the start as well as other problems. These key areas of law include:

**NRS Chapter 40 (Residential Constructional Defects)** — The “Chapter 40” constructional defect statutes apply only to residential construction, including condominiums and apartments, as well as single family homes. Under Nevada law, there is a limited definition of a construction defect, which includes only work that poses an unreasonable risk of injury to a person or property. The definition does not include violations of city codes or ordinances unless those violations result in physical damages to the property.

*Limitations on Indemnification Provisions:* In Nevada, there are limitations on the types of indemnification provisions that can be included in a contract relating to residential construction. Specifically, any provision in a contract that requires a subcontractor to indemnify, defend or otherwise hold harmless another party from any liability that is caused by the negligence, whether active or passive, or intentional act or omission of the other party is void and unenforceable. In other words, indemnification must be limited to the indemnitors own actions.

*Owner Controlled Insurance Policies (“wraps” or “OCIPs”):* In Nevada, many developers of residential subdivisions are obtaining wrap insurance policies to cover all of the contractors

and subcontractors on the project. Nevada law permits the use of those types of policies. However, Chapter 40 includes specific provisions that apply to wrap policies. Most of those provisions relate to certain disclosures that are required to be made to covered parties. There are also limitations on amounts that can be charged to covered parties under the wrap policy.

*Mandatory Mediation:* Chapter 40 residential constructional defect statutes mandate various procedures for constructional defect claims. In addition to specified notice requirements, those procedures include mandatory mediation before the parties can proceed to arbitration or litigation.

**NRS Chapter 108 (Mechanics Liens and Related Issues)** — Chapter 108 of the Nevada Revised Statutes regulate mechanics liens and related issues. There are some key issues to consider to ensure that contracts comply with those provisions:

*No Waiver of Mechanics Lien:* Under Nevada law, you cannot waive your mechanics lien rights. Any provision in a contract that purports to waive any of the mechanics lien rights provided by Nevada law is void and unenforceable as against public policy.

*Mandatory and Recommended Forms:* The Nevada statutes set forth several statutory forms that apply to mechanics lien rights, some of which are mandatory and some of which are only in a suggested format. It is important that any contractual exhibits that relate to the applicable forms (particularly for lien releases) comply with the statutory requirements. Otherwise, they will be deemed to be unenforceable.

*Choice of Law and Venue:* Any construction contract provision that purports to apply the law of another state to a dispute, or which purports to require that any dispute resolution process take place outside of the State, is void and unenforceable as against public policy.

*No Damage for Delay Clauses:* Nevada law significantly limits the use of “no damage for delay” clauses. With some minor exceptions set forth in the statutes, “no damage for delay” clauses are void and unenforceable as against public policy.

**NRS Chapter 624 (Licensure and Prompt Pay Act)** — Included in this statute are three important points of consideration, licensure, license limits and prompt pay statutes.

*Licensure:* In Nevada, all contractors must be licensed. In fact, it is a crime to engage in contracting in Nevada without a license. That includes even bidding on work. It is also important to note that construction managers must be licensed in Nevada, even if they are not actually performing any construction work.

*License limits:* In Nevada, contractors are issued license limits, and they cannot contract for any project in excess of that license limit. They are also prohibited from breaking up a project into separate contracts to circumvent license limits.

*Prompt Pay Statutes:* These are statutes that govern payments from owners to general contractors and payments from general contractors to subcontractors. In Nevada, these statutes cannot be waived. There are many key provisions here that must be considered, including payment dates, a limit on the retention that can be withheld (5 percent), limits on withholding of payments as well as stop work provisions.

With the considerable uptick in construction projects in the state, it is becoming critical for companies who have not built construction projects in Nevada to understand the complexities of

Nevada law. Before engaging in any construction project in Nevada, it is essential that any construction contract that will be used for a project located in Nevada be tailored to specifically comply with Nevada law.

—By Paul Georgeson, McDonald Carano LLP

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