

# Legal Corner

## Wait, I am Getting Foreclosed On? The Far-Reaching Scope of Mechanic's Liens

by Harry Arnold, Esq.

You own a piece of commercial property. One of your tenants hires a plumbing contractor to install top-of-the-line plumbing fixtures for his business. Yet your tenant falls on hard times, and is unable pay the plumber. Fast forward a few months and now the plumbing contractor has filed a lawsuit seeking to foreclose on your commercial property. How is this possible? You the property owner did not hire the plumber. You were not even aware your tenant had hired the plumber. And you certainly did not enter into any contract or make any agreement with the plumber. The answer lies in NRS 108, Nevada's lien statute, which offers the potential remedy of judicial foreclosure to contractors who are shorted on their bill.

Intuitively, it would follow that the absence of a contractual relationship with a contractor would shield against any foreclosure action. Yet the Nevada legislature, along with various other state legislatures, has made the policy decision to afford contractors unique protections under the law. After all, it is in the public interest to incentivize and protect contractors who perform improvements/repairs on commercial (or residential) property. Yet the public interest may not always intersect with the interests of a commercial property owner, especially one that allows tenants to make their own repairs or is unaware of contractors (or subcontractors) that may be working on their property. And NRS 108 is rather unforgiving, as it defines a "lien claimant" as one that performed work or provided materials totaling a mere \$500 or more in value. That means a plumber who installed a single toilet, or perhaps just repaired a single toilet, could force a sale of the entire property in the event his/her bill is not paid.

To be sure, there are safeguards and protections in place that prevent commercial property owners from suddenly waking up one morning to a judicially mandated foreclosure of their property. First and foremost, if a property owner has knowledge that a tenant is making repairs/improvements, the law allows for the recording of a notice of non-responsibility. Be-

yond that, there are hoops that lien claimants (contractors) must jump through. For one, many lien claimants are required to serve a notice of right to lien upon the property owner. Moreover, in order for a NRS 108 mechanic's lien to have "teeth," it should ideally be perfected with the county recorder's office. Otherwise, that plumber seeking to foreclose on your commercial property will not have priority over other lien claimants - potentially making foreclosure not worth the hassle. And to perfect a mechanic's lien, claimants must act rather quickly, as they are required to record within a mere 90 days of either (a) completion of the work, (b) last delivery of materials to the property, or (c) the last day in which work was performed.

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The prospect of judicial foreclosure, although certainly severe enough, is only one facet of the potential legal liability facing commercial property owners. Indeed, a commercial property owner who is aware of a contractor that is performing work on the property, and implicitly agrees or encourages said contractor to perform said work, potentially gives rise to a claim for unjust enrichment. The absence of any written agreement or contract between the property owner and contractor is immaterial for an unjust enrichment claim, which is based in equity. Along the same lines, a commercial property owner only entering into a contract/agreement with a general contractor will likely not shield the property from potential claims (whether a mechanic's lien or unjust enrichment) from any subcontractor that said general contractor chooses to employ. In this scenario, the property owner is likely deemed to have constructive notice of the subcontractor's work (and thus implicit approval of said work).

In most situations, there is at least one other lienholder holding an interest in the property (such as a bank that extended a mortgage), that has priority and a

vested interest in preventing the property from being foreclosed on. Thus, as often is the case, lienholders with higher priority would likely pay off the amount of the mechanic's lien, and subsequently file suit against the tenant in a subrogation-type action. Nevertheless, this is not to say that foreclosure under NRS 108 is too rare an occurrence to cause any concern. It can happen, and commercial property owners would be prudent to understand exactly who is performing work on their property, and whether they are being paid.



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