

**SUGGESTED MANDATORY LANGUAGE FOR RESIDENTIAL
IMPROVEMENT CONTRACTS
PURSUANT TO ASSEMBLY BILL 39**

DISCLAIMER

The following document was prepared by the Nevada State Contractors Board as an aid and resource to assist Nevada's contractors in bringing their contracts into compliance with Assembly Bill 39 (2023 Regular Session, hereinafter AB39). AB39 requires various mandatory provisions to be included in all contracts for residential improvements effective October 1, 2023.

In presenting this document, the Board is not providing legal advice. Contractors and other users of this document should review their existing contracts and may use parts of this document to supplement their contracts and should direct legal questions to their private legal counsel. The Board may revise, improve, or replace this document in the future.

INTRODUCTION

Assembly Bill 39 (AB39) passed in the 2023 Legislature and became effective on October 1, 2023. AB39 effects all residential improvement contracts, and includes contracts for construction, remodeling, repair, or improvements to existing, completed single-family residences that are occupied by their owners.¹ The primary intent of AB39 was to establish a mandatory minimum set of requirements for all such contracts. The intent of this document is to set out some model language for those provisions or concepts required by AB39 and, for each, to add some discussion and notes regarding how the provisions might be applied in contracting businesses statewide.

¹ "Single-family residence" is defined in NRS 624.455 as follows:

1. Except as otherwise provided in subsection 3, "single-family residence" means:
 - (a) A detached, stand-alone dwelling which is built upon a foundation and situated on its own real property parcel; or
 - (b) An individual condominium unit, townhouse unit or duplex unit,
↳ that serves as the residence for its owner.
2. Except as otherwise provided in subsection 3, the term includes:
 - (a) Any improvements associated with the dwelling that are affixed to the real property parcel.
 - (b) Any other real property which:
 - (1) Has a unique assessor's parcel number or other unique identifier; and
 - (2) Is occupied as a residence by the owner of the property.
3. The term does not include:
 - (a) Any mobile or manufactured home.
 - (b) Personal property.
 - (c) Common areas or common elements of a condominium or other multi-family dwelling. As used in this paragraph, "common elements" has the meaning ascribed to it in NRS 116.017.
 - (d) Improvements to any real property that is not owned by the dweller of the residence.
 - (e) Any dwelling or real property improvement which is rented or leased on a full- or part-time basis by a person who is not a member of the owner's family. As used in this paragraph, "member of the owner's family" means a person related to the owner by blood, adoption, marriage or domestic partnership within the second degree of consanguinity or affinity.

Initially, it must be noted what kinds of contracts the Legislature directed are subject to the provisions of AB39. Beginning October 1, 2023, “all contracts to be used by residential contractors for work concerning a residential improvement” are subject to AB39. *See* AB39, Sec. 1, subsection 1. The Legislature defined “work concerning a residential improvement” or “work” to mean “any construction, remodeling, repair or improvement performed by a residential contractor to a completed, single-family residence or any activity for the supervision concerning such work.” *See* AB39, Sec. 1, subsection 7(d). Based upon the definitions used by the Legislature, the only residential work excluded from the requirements of AB39 would be:

- Construction of a new and not yet occupied single-family residence;
- Construction involving multi-family housing (except that construction inside a completed unit that is owned by the occupant, like a residential condominium, would be subject to AB39);
- Construction on a single-family residence that is not used by the owner as his or her primary residence, such as investment properties for “flipping” or rental.

It is not the intent of this document to provide legal advice. It is advised that a contractor consult with legal counsel regarding any changes to the contractor’s contract or with any questions or concerns related to the language proposed in this document. Many of the provisions made mandatory in AB39 are likely already in a contractor’s existing contracts, but care must be taken to assure that existing language does not contradict or cause confusion when read in conjunction with the mandatory AB39 provisions since the mandatory AB39 provisions will control.

It is the Board’s hope that setting out the suggested mandatory language in this document and the accompanying Word document will allow Nevada’s contractors to cut-and-paste the language into their existing contracts, thus minimizing additional costs while fostering compliance with the new requirements of the new law.

PART 1 – BASIC INFORMATION

NOTE: Remember to change all identifying information for your company as needed.

CONTRACT FOR RESIDENTIAL IMPROVEMENT

XYZ LLC.
1234 Street Address Ln.
Las Vegas, Nevada 89523
Nevada License #12345
Bid Limit \$250,000

NAME AND ADDRESS OF OWNER AND RESIDENCE:

JOE HOMEOWNER
5678 Somewhere Ave.
Las Vegas, Nevada 89521

DATE CONTRACT IS SIGNED: _____

ESTIMATED DATE OF COMPLETION: _____

NOTES AND EXPLANATION:

Source: AB39, Section 1, subsections 2(a), 2(b), 2(c), and 2(d)

This is basic identifying information for all residential improvement contracts. The check boxes for “New Construction” or “Remodeling, Repair, or Improvement” are not needed if the contractor only does one or the other. Under AB39, contracts for new construction have different requirements than contracts for remodeling, repair, or improvements.

All contracts need to set an estimated date of completion. The estimated date of completion should be realistic so that both parties can depend on it.

Practice Tip: The provisions of AB39 do not apply to:

- Commercial construction;
- Construction of a new and not yet occupied single-family residence;
- Construction involving multi-family housing (except that construction inside a completed unity that is owned by the occupant, like a residential condominium, would be subject to AB39); or
- Construction on a single-family residence that is not used by the owner as his or her primary residence, such as investment properties for “flipping” or rental.

PART 2 – DESCRIPTION OF WORK

DESCRIPTION OF WORK TO BE PERFORMED AND SCHEDULE OF PROGRESS PAYMENTS

<CONTRACTOR> will perform the following work for which <HOMEOWNER> will pay according to the following schedule:

DESCRIPTION OF WORK	AMOUNT DUE UPON COMPLETION
1.	\$**,***.**
2.	\$**,***.**
3.	\$**,***.**
4.	\$**,***.**
5.	\$**,***.**
6.	\$**,***.**
7.	\$**,***.**
Applicable Taxes (if any)	\$*,***.**
TOTAL CONTRACT PRICE	\$**,***.**

Any and all changes to the Description of Work, the Amount Due Upon Completion, and/or the Total Contract Price can only be agreed to in a written change order which must be signed and dated by authorized representatives for both <CONTRACTOR> and <HOMEOWNER>.

<CONTRACTOR> will apply for and obtain all necessary permits.

By initialing here, I am indicating that I have read the above provisions and understand them: _____

NOTES AND EXPLANATION:

Source: AB39, Section 1, subsections 2(e), 2(f), 2(i), 2(k), 3(a), and 6

AB39 no longer allows progress payments to be made upon estimated percentages of completion. Instead, AB39 requires that the contractor specify what work will be completed for which a specific price will be paid ***“in dollars and cents.”*** The Total Contract Price must include all applicable taxes. The requirement that the progress payments be specific to work completed and not based upon an estimated percentage of work completed is not required where a contractor has posted a performance and completion bond for the project, the cost of which can be included in the Total Contract Price.

Practice Tip: As a best practice, the more specific the work is described and the price is set out, the less opportunity for misunderstanding by both parties of their obligations.

Practice Tip: Where the scope of work is not knowable at the beginning of a project (such as where exploratory or diagnostic work must first be performed to determine the ultimate scope of a repair), a best practice might be to execute an initial contract defining the initial work that must be performed with “not to exceed” language for the price. After the scope of the repair work can be defined, either a new contract could be executed or a change order could be negotiated for the repair work.

Practice Tip: All change orders must be in writing, must contain a description of the work to be performed, must set a price for the work once performed, and must be signed and dated by both the contractor and the homeowner or an authorized representative for either.

Practice Tip: Because AB39 requires the contractor to obtain all necessary permits, as a best practice, the contractor should set out the obtaining of the necessary permits as one of the pieces of work described and add the cost thereof to the Total Contract Price. If the actual price of the permit cannot be ascertained at the time of contracting, the contractor could estimate the cost with not-to-exceed language.

PART 3 – DEPOSIT

INITIAL DEPOSIT OR DOWN PAYMENT

Before <CONTRACTOR> will start work on the project, <HOMEOWNER> shall pay to <CONTRACTOR> a deposit of \$ _____. This amount may not exceed the lesser of 10% of the Total Contract Price or \$1,000.

By initialing here, I am indicating that I have read the above provisions and understand them: _____

NOTES AND EXPLANATION:

Source: AB39, Section 1, subsections 2(g)

AB39 expressly and specifically states that a contractor may require an initial down payment or deposit of no more than 10% of the contract price or \$1,000, whichever is less. The limitation on the initial down payment does not apply where:

- The contractor has filed with the Board a consumer protection bond in the amount of \$100,000; or

- The contractor has been granted relief from posting a licensing bond pursuant to the terms of NRS 624.270.

Practice Tip: As a best practice, if the limits of \$1,000 or 10%, whichever is less, will be constantly constraining on a contractor’s business practices, it might well be worth obtaining and filing the \$100,000 consumer protection bond to avoid the initial down payment constraints. Furthermore, if the contractor has been licensed for five or more years, the contractor may apply for relief from its surety bond requirement under NRS 624.270, and if such relief is granted by the Board, the initial down payment constraints in AB39 will not apply to that contractor.

Practice Tip: As a best practice, a contractor should consult with legal counsel about options to handle situations and circumstances unique that that contractor’s business practices. For example, a contract may require customized materials or goods such as cabinetry, countertops, or windows. AB39 does not allow a contractor to obtain a deposit from the homeowner for the customized materials or goods, a contractor’s legal counsel may be able to advise how to address the issues related to customized materials or goods.

PART 4 – STATUTORY MANDATES

RESIDENTIAL RECOVERY FUND

Payment may be available from the Recovery Fund if you are damaged financially by a project performed on your residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this State. To obtain information relating to the Recovery Fund and filing a claim for recovery from the Recovery Fund, you may contact the State Contractor’s Board.

By initialing here, I am indicating that I have read the above provisions and understand them: _____

LIST OF SUBCONTRACTORS AND MATERIALS SUPPLIERS (\$500 or more)

NAME	LICENSE #	BUSINESS ADDRESS	TELEPHONE NO.

By initialing here, I am indicating that I have read the above provisions and understand them: _____

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 material 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 of 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 of 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 single-family residence or a duplex owned by an individual, the persons signing these releases lost 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.**

By initialing here, I am indicating that I have read the above provisions and understand them: _____

NOTES AND EXPLANATION:

Source: AB39, Section 1, subsections 2(h), NRS 624.520, NRS 624.600, and NAC 624.693

The above text is required by AB39 and most of it is taken verbatim from NRS 624.520, NRS 624.600, and NAC 624.693. The text for the notice regarding the residential recovery fund and the notice to the homeowner regarding lien rights must be used verbatim as is.

Practice tip: AB39 mandates the list of subcontractors and materials supplier and pricing for each, so the list must be completed and priced and included at some time. If the names of the particular subcontractors and materials suppliers are not known at the time of the creation and presentation of the contract, a subsequent change order will be needed when the subcontractors and materials suppliers are identified.

PART 5 – PLAN AND SCALE DRAWINGS (New Work Only)

PLAN AND SCALE DRAWING

<INSERT plan and scale drawing, showing the shape, size, and dimensions of and specifications for the construction and equipment for the work specified in the contract, and a description of the work to be done, the materials to be used and the equipment to be installed.>

By initialing here, I am indicating that I have read the above provisions and understand them: _____

NOTES AND EXPLANATION:

Source: AB39, Section 1, subsection 2(j)

For new work **ONLY**, the contract must include “a plan and scale drawing showing the shape, size and dimensions of and the specifications for the construction and equipment for the work specified in the contract, and a description of the work to be done, the materials to be used and the equipment to be installed, and the agreed consideration for the work.”

Practice Tip: AB39 does not prevent a contractor from requiring a homeowner to sign or initial the plans or drawings that will be used for the construction to make clear the agreed upon scope of work.

PART 6 – PAYMENT OF COMMISSION (Optional)

PAYMENT OF COMMISSION TO SALESPERSON

Please be on notice that some portion of the Total Contract Price will be paid to one or more salesmen on a *pro rata* basis relative to the schedule of payments otherwise due and set out in this contract.

By initialing here, I am indicating that I have read the above provisions and understand them: _____

NOTES AND EXPLANATION:

Source: AB39, Section 1, subsection 2(l)

The statement above, or something similar to it, is required where a contractor will be paying a commission to a salesperson out of the Total Contract Price. In such a case, the salesman can only be paid on a *pro rata* basis in keeping with the progress payments being made to the contractor throughout the contract. In other words, the salesman will in no case receive all of his or her commission until the contractor has been paid in full.

PART 7 – SIGNATURE LINE REQUIREMENTS

NOTICE OF HOMEOWNERS' RIGHTS

You are informed of the following as your rights as the homeowner in this project:

- (1) You may contact the Nevada State Contractors Board if assistance is needed to clarify any of the provisions of this contract that you do not fully understand;
- (2) You have the right to request a bond for payment and performance if such a bond is not otherwise required pursuant to NRS 624.270;
- (3) You may contact an attorney for an explanation of your rights as the owner of the property under the contract;
- (4) You may, if the contract was explained to you in a language other than the language in which the contract is written, ask for a contract that is written in the language in which the contract was explained;
- (5) You must be furnished with a legible copy of all documents signed by you and the contractor; and
- (6) You must be furnished with a signed receipt from the contract for any money paid to the contractor by you.

By initialing here, I am indicating that I have read the above provisions and understand them: _____

<INSERT signature lines for the contractor and homeowner as appropriate.>

NOTES AND EXPLANATION:

Source: AB39, Section 1, subsections 3(b) and 4

AB39 requires that the above language, or something similar, be placed in close proximity to the signatures of the parties. As a best practice, the above language might be placed just above the signature lines, as suggested herein.

Practice Tip: Where a contractor routinely conducts business with homeowners who speak a language other than English, the contractor may want to have at the ready versions of the contract that have been translated into the other language(s). AB39 requires that if the contractor or his, her, or its agent communicates the terms of the contract with a homeowner in any language other than English, that the contract must provide a copy of the contract in the language in which the parties conversed.

Practice Tip: If a homeowner requests that the contractor post a performance and completion bond, the cost of the bond can be added the Total Contract Price. As a best practice, a contractor may want to discuss the possibility of such a bond with the homeowner up front so that if the homeowner wants it, it can be included in the Total Contract Price at the time of contract execution.