
ASSEMBLY BILL NO. 462—ASSEMBLYWOMAN CARLTON

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to constructional defects.
(BDR 3-1010)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to constructional defects; revising provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; revising certain definitions related to constructional defects; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions requiring a claimant to pursue a claim under a homeowner's warranty under certain circumstances; revising provisions governing damages recovered by a claimant; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; removing the provision prohibiting a homeowner's association from pursuing an action for a construction defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, before an owner of a residence or appurtenance or certain
2 other persons may commence a civil action against a contractor, subcontractor,
3 supplier or design professional for certain defects in the residence or appurtenance,
4 the claimant must provide notice of the defect to the contractor. The contractor,
5 subcontractor, supplier or design professional who receives the notice must be
6 allowed to inspect the alleged constructional defect and may elect to repair or cause
7 the defect to be repaired. (NRS 40.645, 40.646, 40.647) **Sections 1, 3 and 6-11** of
8 this bill authorize one notice to be sent concerning similarly situated owners of



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9 residences or appurtenances within a single development that allegedly have
10 common constructional defects.

11 **Section 4** of this bill revises the existing definition of “constructional defect” to
12 provide that a constructional defect is a defect which: (1) is done in violation of
13 law; (2) proximately causes physical damage to the residence, appurtenance or real
14 property to which the residence or appurtenance is affixed; (3) is not completed in a
15 good and workmanlike manner in accordance with the generally accepted standard
16 of care in the industry; or (4) presents an unreasonable risk of injury to a person or
17 property.

18 **Section 6** revises the information required to be included in a notice of
19 constructional defect to: (1) state in reasonable detail, rather than specific detail, the
20 defect or any damage or injury to each residence or appurtenance that is subject to
21 the notice; and (2) describe in reasonable detail the location of the defect rather
22 than state the exact location. **Section 6** also removes a provision of existing law
23 which requires that the owner of the residence or appurtenance include a signed
24 statement in the notice in which the owner verifies that each defect, damage and
25 injury exists in the residence or appurtenance.

26 Existing law requires, under certain circumstances, a claimant and an expert
27 who provided an opinion concerning an alleged constructional defect, or a
28 representative of the expert who has knowledge of the alleged defect to be present
29 when a contractor, subcontractor, supplier or design professional conducts the
30 required inspection of the alleged defect. (NRS 40.647) **Section 9** requires only the
31 claimant or a representative of the claimant to be present at such an inspection.

32 **Section 12** of this bill removes a provision of existing law which requires a
33 claimant to exhaust certain claims under the homeowner’s warranty before
34 commencing a cause of action for constructional defects. **Section 13** of this bill
35 authorizes a claimant to recover reasonable attorney’s fees as part of the claimant’s
36 damages in a cause of action for constructional defects.

37 Existing law generally limits the period in which an action for damages caused
38 by a deficiency in construction of improvements to real property may be
39 commenced after substantial completion of the improvement. These periods of
40 limitation are known as statutes of repose. Existing law provides that the statute
41 of repose for all actions for damages caused by a deficiency in construction of
42 improvement to real property is 6 years after substantial completion of the
43 improvement. (NRS 11.202) **Section 15** of this bill provides instead that such an
44 action for damages for certain deficiencies or injury to real or personal property
45 must be commenced within 8 years after substantial completion of the
46 improvement. **Section 15** also authorizes such an action to be commenced at any
47 time if the deficiency: (1) was a result of willful misconduct or was fraudulently
48 concealed; or (2) caused injury to or wrongful death of a person.

49 **Sections 3 and 17** of this bill authorize a homeowner’s association to institute,
50 defend or intervene in litigation, arbitration, mediation or administrative
51 proceedings in its own name on behalf of itself or two or more units’ owners on
52 matters affecting the common-interest community.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. Except as otherwise provided in subsection 2, not later*
4 *than 60 days after a contractor receives a notice pursuant to*



1 subsection 4 of NRS 40.645 which alleges common constructional
2 defects to residences or appurtenances within a single
3 development and which complies with the requirements of
4 subsection 4 of NRS 40.645 for giving such notice, the contractor
5 may respond to the named owners of the residences or
6 appurtenances in the notice in the manner set forth in
7 NRS 40.6472.

8 2. The contractor may provide a disclosure of the notice of
9 the alleged common constructional defects to each unnamed
10 owner of a residence or appurtenance within the development to
11 whom the notice may apply in the manner set forth in this section.
12 The disclosure must be sent by certified mail, return receipt
13 requested, to the home address of each such owner. The disclosure
14 must be mailed not later than 60 days after the contractor receives
15 the notice of the alleged common constructional defects, except
16 that if the common constructional defects may pose an imminent
17 threat to health and safety, the disclosure must be mailed as soon
18 as reasonably practicable, but not later than 20 days after the
19 contractor receives the notice.

20 3. The disclosure of a notice of alleged common
21 constructional defects provided by a contractor to the unnamed
22 owners to whom the notice may apply pursuant to subsection 2
23 must include, without limitation:

24 (a) A description of the alleged common constructional defects
25 identified in the notice that may exist in the residence or
26 appurtenance;

27 (b) A statement that notice alleging common constructional
28 defects has been given to the contractor which may apply to the
29 owner;

30 (c) A statement advising the owner that the owner has 30 days
31 within which to request the contractor to inspect the residence or
32 appurtenance to determine whether the residence or appurtenance
33 has the alleged common constructional defects;

34 (d) A form which the owner may use to request such an
35 inspection or a description of the manner in which the owner may
36 request such an inspection;

37 (e) A statement advising the owner that if the owner fails to
38 request an inspection pursuant to this section, no notice shall be
39 deemed to have been given by the owner for the alleged common
40 constructional defects; and

41 (f) A statement that if the owner chooses not to request an
42 inspection of the owner's residence or appurtenance, the owner is
43 not precluded from sending a notice pursuant to NRS 40.645
44 individually or commencing an action or amending a complaint to
45 add a cause of action for a constructional defect individually after



1 *complying with the requirements set forth in this section and NRS*
2 *40.600 to 40.695, inclusive.*

3 *4. If an unnamed owner requests an inspection of the*
4 *owner's residence or appurtenance in accordance with subsection*
5 *3, the contractor must provide the response required pursuant to*
6 *NRS 40.6472 not later than 45 days after the date on which the*
7 *contractor receives the request.*

8 *5. If a contractor who receives a notice pursuant to*
9 *subsection 4 of NRS 40.645 does not provide a disclosure to*
10 *unnamed owners as authorized pursuant to this section, the*
11 *owners of the residences or appurtenances to whom the notice*
12 *may apply may commence an action for the constructional defect*
13 *without complying with any other provisions set forth in this*
14 *section and NRS 40.600 to 40.695, inclusive. This subsection does*
15 *not establish or prohibit the right to maintain a class action.*

16 *6. If a contractor fails to provide a disclosure to an unnamed*
17 *owner to whom the notice of common constructional defects was*
18 *intended to apply:*

19 *(a) The contractor shall be deemed to have waived the*
20 *contractor's right to inspect and repair any common*
21 *constructional defect that was identified in the notice with respect*
22 *to that owner; and*

23 *(b) The owner is not required to comply with the provisions set*
24 *forth in NRS 40.645 or 40.647 before commencing an action or*
25 *amending a complaint to add a cause of action based on that*
26 *common constructional defect.*

27 **Sec. 2.** NRS 40.600 is hereby amended to read as follows:
28 40.600 As used in NRS 40.600 to 40.695, inclusive, *and*
29 *section 1 of this act*, unless the context otherwise requires, the
30 words and terms defined in NRS 40.603 to 40.634, inclusive, have
31 the meanings ascribed to them in those sections.

32 **Sec. 3.** NRS 40.610 is hereby amended to read as follows:

33 40.610 "Claimant" means:

- 34 1. An owner of a residence or appurtenance; ~~or~~
35 2. A representative of a homeowners' association *that is*
36 *responsible for a residence or appurtenance and is* acting within
37 the scope of the representative's duties pursuant to chapter 116 or
38 117 of NRS ~~H~~; *or*

39 *3. Each owner of a residence or appurtenance to whom a*
40 *notice applies pursuant to subsection 4 of NRS 40.645.*

41 **Sec. 4.** NRS 40.615 is hereby amended to read as follows:

42 40.615 "Constructional defect" means a defect in the design,
43 construction, manufacture, repair or landscaping of a new residence,
44 of an alteration of or addition to an existing residence, or of an
45 appurtenance and includes, without limitation, the design,



1 construction, manufacture, repair or landscaping of a new residence,
2 of an alteration of or addition to an existing residence, or of an
3 appurtenance:

4 1. Which ~~is presents an unreasonable risk of injury to a person or~~
5 ~~property; or~~ *is done in violation of law, including, without*
6 *limitation, in violation of local codes or ordinances;*

7 2. Which ~~is not completed in a good and workmanlike manner~~
8 ~~and~~ proximately causes physical damage to the residence, an
9 appurtenance or the real property to which the residence or
10 appurtenance is affixed ~~is~~;

11 3. *Which is not completed in a good and workmanlike*
12 *manner in accordance with the generally accepted standard of*
13 *care in the industry for that type of design, construction,*
14 *manufacture, repair or landscaping; or*

15 4. *Which presents an unreasonable risk of injury to a person*
16 *or property.*

17 **Sec. 5.** NRS 40.635 is hereby amended to read as follows:

18 40.635 NRS 40.600 to 40.695, inclusive ~~is~~, *and section 1 of*
19 *this act:*

20 1. Apply to any claim that arises before, on or after July 1,
21 1995, as the result of a constructional defect, except a claim for
22 personal injury or wrongful death, if the claim is the subject of an
23 action commenced on or after July 1, 1995.

24 2. Prevail over any conflicting law otherwise applicable to the
25 claim or cause of action.

26 3. Do not bar or limit any defense otherwise available, except
27 as otherwise provided in those sections.

28 4. Do not create a new theory upon which liability may be
29 based, except as otherwise provided in those sections.

30 **Sec. 6.** NRS 40.645 is hereby amended to read as follows:

31 40.645 1. Except as otherwise provided in this section and
32 NRS 40.670, before a claimant commences an action or amends a
33 complaint to add a cause of action for a constructional defect against
34 a contractor, subcontractor, supplier or design professional, the
35 claimant:

36 (a) Must give written notice by certified mail, return receipt
37 requested, to the contractor, at the contractor's address listed in the
38 records of the State Contractors' Board or in the records of the
39 office of the county or city clerk or at the contractor's last known
40 address if the contractor's address is not listed in those records; and

41 (b) May give written notice by certified mail, return receipt
42 requested, to any subcontractor, supplier or design professional
43 known to the claimant who may be responsible for the
44 constructional defect, if the claimant knows that the contractor is no



1 longer licensed in this State or that the contractor no longer acts as a
2 contractor in this State.

3 2. The notice given pursuant to subsection 1 must:

4 (a) Include a statement that the notice is being given to satisfy
5 the requirements of this section;

6 ~~(b) Identify in specific detail each defect, damage and injury;~~
7 *Specify in reasonable detail the defects or any damages or injuries*
8 to each residence or appurtenance that is the subject of the claim ~~;~~
9 ~~including, without limitation, the exact location of each such defect,~~
10 ~~damage and injury;~~ *; and*

11 (c) Describe in reasonable detail the cause of the defects if the
12 cause is known , ~~and~~ the nature and extent that is known of the
13 damage or injury resulting from the defects ~~;~~ *and*

14 ~~—(d) Include a signed statement, by each named owner of a~~
15 ~~residence or appurtenance in the notice, that each such owner~~
16 ~~verifies that each such defect, damage and injury specified in the~~
17 ~~notice exists in the residence or appurtenance owned by him or her.~~
18 ~~If a notice is sent on behalf of a homeowners' association, the~~
19 ~~statement required by this paragraph must be signed under penalty~~
20 ~~of perjury by a member of the executive board or an officer of the~~
21 ~~homeowners' association.]~~ *and the location of each defect within*
22 *each residence or appurtenance to the extent known.*

23 3. *Notice that includes an expert opinion concerning the*
24 *cause of the constructional defects and the nature and extent of*
25 *the damage or injury resulting from the defects which is based on*
26 *a valid and reliable representative sample of the components of the*
27 *residences or appurtenances may be used as notice of the common*
28 *constructional defects within the residences or appurtenances to*
29 *which the expert opinion applies.*

30 4. *Except as otherwise provided in subsection 5, one notice*
31 *may be sent relating to all similarly situated owners of residences*
32 *or appurtenances within a single development that allegedly have*
33 *common constructional defects if:*

34 (a) *An expert opinion is obtained concerning the cause of the*
35 *common constructional defects and the nature and extent of the*
36 *damage or injury resulting from the common constructional*
37 *defects;*

38 (b) *That expert opinion concludes that based on a valid and*
39 *reliable representative sample of the components of the residences*
40 *and appurtenances included in the notice, it is the opinion of the*
41 *expert that those similarly situated residences and appurtenances*
42 *may have such common constructional defects; and*

43 (c) *A copy of the expert opinion is included with the notice.*

44 5. A representative of a homeowners' association may send
45 notice pursuant to this section on behalf of an association *that is*



1 *responsible for a residence or appurtenance* if the representative is
2 acting within the scope of the representative's duties pursuant to
3 chapter 116 or 117 of NRS.

4 ~~4.~~ **6.** Notice is not required pursuant to this section before
5 commencing an action if:

6 (a) The contractor, subcontractor, supplier or design professional
7 has filed an action against the claimant; or

8 (b) The claimant has filed a formal complaint with a law
9 enforcement agency against the contractor, subcontractor, supplier
10 or design professional for threatening to commit or committing an
11 act of violence or a criminal offense against the claimant or the
12 property of the claimant.

13 **Sec. 7.** NRS 40.646 is hereby amended to read as follows:

14 40.646 1. Except as otherwise provided in subsection 2, not
15 later than 30 days after the date on which a contractor receives
16 notice of a constructional defect pursuant to NRS 40.645, the
17 contractor shall forward a copy of the notice by certified mail, return
18 receipt requested, to the last known address of each subcontractor,
19 supplier or design professional whom the contractor reasonably
20 believes is responsible for a defect specified in the notice.

21 2. If a contractor does not provide notice as required pursuant
22 to subsection 1, the contractor may not commence an action against
23 the subcontractor, supplier or design professional related to the
24 constructional defect unless the contractor demonstrates that, after
25 making a good faith effort, the contractor was unable to identify the
26 subcontractor, supplier or design professional whom the contractor
27 believes is responsible for the defect within the time provided
28 pursuant to subsection 1.

29 3. ~~Not~~ *Except as otherwise provided in subsection 4, not*
30 later than 30 days after receiving notice from the contractor pursuant
31 to this section, the subcontractor, supplier or design professional
32 shall inspect the alleged constructional defect in accordance with
33 *subsection 1 of* NRS 40.6462 and provide the contractor with a
34 written statement indicating:

35 (a) Whether the subcontractor, supplier or design professional
36 has elected to repair the defect for which the contractor believes the
37 subcontractor, supplier or design professional is responsible; and

38 (b) If the subcontractor, supplier or design professional elects to
39 repair the defect, an estimate of the length of time required for the
40 repair, and at least two proposed dates on and times at which the
41 subcontractor, supplier or design professional is able to begin
42 making the repair.

43 4. *If the notice of a constructional defect forwarded by the*
44 *contractor was given pursuant to subsection 4 of NRS 40.645 and*
45 *the contractor provides a disclosure of the notice of the alleged*



1 *common constructional defects to the unnamed owners to whom*
2 *the notice may apply pursuant to section 1 of this act:*

3 *(a) The contractor shall, in addition to the notice provided*
4 *pursuant to subsection 1, upon receipt of a request for an*
5 *inspection, forward a copy of the request to or notify each*
6 *subcontractor, supplier or design professional who may be*
7 *responsible for the alleged defect of the request not later than 5*
8 *working days after receiving such a request; and*

9 *(b) Not later than 20 days after receiving notice from the*
10 *contractor of such a request, the subcontractor, supplier or design*
11 *professional shall inspect the alleged constructional defect in*
12 *accordance with subsection 2 of NRS 40.6462 and provide the*
13 *contractor with a written statement indicating:*

14 *(1) Whether the subcontractor, supplier or design*
15 *professional has elected to repair the defect for which the*
16 *contractor believes the subcontractor, supplier or design*
17 *professional is responsible; and*

18 *(2) If the subcontractor, supplier or design professional*
19 *elects to repair the defect, an estimate of the length of time*
20 *required for the repair, and at least two proposed dates on and*
21 *times at which the subcontractor, supplier or design professional*
22 *is able to begin making the repair.*

23 **5.** If a subcontractor, supplier or design professional elects to
24 repair the constructional defect, the contractor or claimant may hold
25 the subcontractor liable for any repair which does not eliminate the
26 defect.

27 **Sec. 8.** NRS 40.6462 is hereby amended to read as follows:
28 40.6462 ~~After~~

29 **1.** *Except as otherwise provided in subsection 2, after* notice
30 of a constructional defect is given to a contractor pursuant to NRS
31 40.645, the claimant shall, upon reasonable notice, allow the
32 contractor and each subcontractor, supplier or design professional
33 who may be responsible for the alleged defect reasonable access to
34 the residence or appurtenance that is the subject of the notice to
35 determine the nature and extent of a constructional defect and the
36 nature and extent of repairs that may be necessary. To the extent
37 possible, the persons entitled to inspect shall coordinate and conduct
38 the inspections in a manner which minimizes the inconvenience to
39 the claimant.

40 **2.** *If notice is given to the contractor pursuant to subsection 4*
41 *of NRS 40.645, the contractor and each subcontractor, supplier or*
42 *design professional who may be responsible for the defect do not*
43 *have the right to inspect the residence or appurtenance of an*
44 *owner who is not named in the notice unless the owner requests*
45 *the inspection in the manner set forth in section 1 of this act. If*



1 *the owner does not request the inspection, the owner shall be*
2 *deemed not to have provided notice pursuant to NRS 40.645.*

3 **Sec. 9.** NRS 40.647 is hereby amended to read as follows:

4 40.647 1. ~~After~~ *Except as otherwise provided in section 1*
5 *of this act, after* notice of a constructional defect is given pursuant
6 to NRS 40.645, before a claimant may commence an action or
7 amend a complaint to add a cause of action for a constructional
8 defect against a contractor, subcontractor, supplier or design
9 professional, the claimant *or a representative of the claimant* must:

10 (a) Allow an inspection of the alleged constructional defect to be
11 conducted pursuant to NRS 40.6462;

12 (b) Be present at an inspection conducted pursuant to NRS
13 40.6462 and identify the exact location of each alleged
14 constructional defect specified in the notice ; and ~~if the notice~~
15 ~~includes an expert opinion concerning the alleged constructional~~
16 ~~defect, the expert, or a representative of the expert who has~~
17 ~~knowledge of the alleged constructional defect, must also be present~~
18 ~~at the inspection and identify the exact location of each alleged~~
19 ~~constructional defect for which the expert provided an opinion; and~~

20 (c) Allow the contractor, subcontractor, supplier or design
21 professional a reasonable opportunity to repair the constructional
22 defect or cause the defect to be repaired if an election to repair is
23 made pursuant to NRS 40.6472.

24 2. If a claimant commences an action without complying with
25 subsection 1 or NRS 40.645, the court shall:

26 (a) Dismiss the action without prejudice and compel the
27 claimant to comply with those provisions before filing another
28 action; or

29 (b) If dismissal of the action would prevent the claimant from
30 filing another action because the action would be procedurally
31 barred by the statute of limitations or statute of repose, the court
32 shall stay the proceeding pending compliance with those provisions
33 by the claimant.

34 **Sec. 10.** NRS 40.6472 is hereby amended to read as follows:

35 40.6472 1. Except as otherwise provided in NRS 40.670 and
36 40.672, *and section 1 of this act*, a written response must be sent by
37 certified mail, return receipt requested, to a claimant who gives
38 notice of a constructional defect pursuant to NRS 40.645:

39 (a) By the contractor not later than 90 days after the contractor
40 receives the notice; and

41 (b) If notice was sent to a subcontractor, supplier or design
42 professional, by the subcontractor, supplier or design professional
43 not later than 90 days after the date that the subcontractor, supplier
44 or design professional receives the notice.



1 2. The written response sent pursuant to subsection 1 must
2 respond to each constructional defect in the notice and:

3 (a) Must state whether the contractor, subcontractor, supplier or
4 design professional has elected to repair the defect or cause the
5 defect to be repaired. If an election to repair is included in
6 the response and the repair will cause the claimant to move from the
7 claimant's home during the repair, the election must also include
8 monetary compensation in an amount reasonably necessary for
9 temporary housing or for storage of household items, or for both, if
10 necessary.

11 (b) May include a proposal for monetary compensation, which
12 may include contribution from a subcontractor, supplier or design
13 professional.

14 (c) May disclaim liability for the constructional defect and state
15 the reasons for such a disclaimer.

16 3. If the claimant is a homeowners' association, the association
17 shall send a copy of the response to each member of the association
18 not later than 30 days after receiving the response.

19 4. If the contractor, subcontractor, supplier or design
20 professional has elected not to repair the constructional defect, the
21 claimant or contractor may bring a cause of action for the
22 constructional defect or amend a complaint to add a cause of action
23 for the constructional defect.

24 5. If the contractor, subcontractor, supplier or design
25 professional has elected to repair the constructional defect, the
26 claimant must provide the contractor, subcontractor, supplier or
27 design professional with a reasonable opportunity to repair the
28 constructional defect.

29 **Sec. 11.** NRS 40.648 is hereby amended to read as follows:

30 40.648 1. If the response provided pursuant to NRS 40.6472
31 includes an election to repair the constructional defect:

32 (a) The repairs may be performed by the contractor,
33 subcontractor, supplier or design professional, if such person is
34 properly licensed, bonded and insured to perform the repairs and, if
35 such person is not, the repairs may be performed by another person
36 who meets those qualifications.

37 (b) The repairs must be performed:

38 (1) On reasonable dates and at reasonable times agreed to in
39 advance with the claimant;

40 (2) In compliance with any applicable building code and in a
41 good and workmanlike manner in accordance with the generally
42 accepted standard of care in the industry for that type of repair; and

43 (3) In a manner which will not increase the cost of
44 maintaining the residence or appurtenance than otherwise would
45 have been required if the residence or appurtenance had been



1 constructed without the constructional defect, unless the contractor
2 and the claimant agree in writing that the contractor will compensate
3 the claimant for the increased cost incurred as a result of the repair.

4 (c) Any part of the residence or appurtenance that is not
5 defective but which must be removed to correct the constructional
6 defect must be replaced.

7 (d) The contractor, subcontractor, supplier or design
8 professional shall prevent, remove and indemnify the claimant
9 against any mechanics' liens and materialmen's liens.

10 2. Unless the claimant and the contractor, subcontractor,
11 supplier or design professional agree to extend the time for repairs,
12 the repairs must be completed:

13 (a) *If the notice was sent pursuant to subsection 4 of NRS*
14 *40.645 and there are four or fewer owners named in the notice, for*
15 *the named owners, not later than 105 days after the date on which*
16 *the contractor received the notice.*

17 (b) *If the notice was sent pursuant to subsection 4 of NRS*
18 *40.645 and there are five or more owners named in the notice, for*
19 *the named owners, not later than 150 days after the date on which*
20 *the contractor received the notice.*

21 (c) *If the notice was sent pursuant to subsection 4 of NRS*
22 *40.645, not later than 105 days after the date on which the*
23 *contractor provides a disclosure of the notice to the unnamed*
24 *owners to whom the notice applies pursuant to section 1 of this*
25 *act.*

26 (d) *If the notice was not sent pursuant to subsection 4 of*
27 *NRS 40.645:*

28 (1) Not later than 105 days after the date on which the notice
29 of the constructional defect was received by the contractor,
30 subcontractor, supplier or design professional if the notice of a
31 constructional defect was received from four or fewer owners; or

32 ~~(b)~~ (2) Not later than 150 days after the date on which the
33 notice of the constructional defect was received by the contractor,
34 subcontractor, supplier or design professional if the notice was
35 received from five or more owners or from a representative of a
36 homeowners' association.

37 3. If repairs reasonably cannot be completed within the time set
38 forth in subsection 2, the claimant and the contractor, subcontractor,
39 supplier or design professional shall agree to a reasonable time
40 within which to complete the repair. If the claimant and contractor,
41 subcontractor, supplier or design professional cannot agree on such
42 a time, any of them may petition the court to establish a reasonable
43 time for completing the repair.

44 4. Any election to repair made pursuant to NRS 40.6472 may
45 not be made conditional upon a release of liability.



1 5. Not later than 30 days after the repairs are completed, the
2 contractor, subcontractor, supplier or design professional who
3 repaired or caused the repair of a constructional defect shall provide
4 the claimant with a written statement describing the nature and
5 extent of the repair, the method used to repair the constructional
6 defect and the extent of any materials or parts that were replaced
7 during the repair.

8 **Sec. 12.** NRS 40.650 is hereby amended to read as follows:

9 40.650 1. If a claimant unreasonably rejects a reasonable
10 written offer of settlement made as part of a response pursuant to
11 paragraph (b) of subsection 2 of NRS 40.6472 and thereafter
12 commences an action governed by NRS 40.600 to 40.695, inclusive,
13 *and section 1 of this act*, the court in which the action is
14 commenced may:

15 (a) Deny the claimant's attorney's fees and costs; and

16 (b) Award attorney's fees and costs to the contractor.

17 ↪ Any sums paid under a homeowner's warranty, other than sums
18 paid in satisfaction of claims that are collateral to any coverage
19 issued to or by the contractor, must be deducted from any recovery.

20 2. If a contractor, subcontractor, supplier or design professional
21 fails to:

22 (a) Comply with the provisions of NRS 40.6472;

23 (b) Make an offer of settlement;

24 (c) Make a good faith response to the claim asserting no
25 liability;

26 (d) Agree to a mediator or accept the appointment of a mediator
27 pursuant to NRS 40.680; or

28 (e) Participate in mediation,

29 ↪ the limitations on damages and defenses to liability provided in
30 NRS 40.600 to 40.695, inclusive, *and section 1 of this act* do not
31 apply and the claimant may commence an action or amend a
32 complaint to add a cause of action for a constructional defect
33 without satisfying any other requirement of NRS 40.600 to 40.695,
34 inclusive ~~H~~, *and section 1 of this act*.

35 3. If a residence or appurtenance that is the subject of the claim
36 is covered by a homeowner's warranty that is purchased by or on
37 behalf of a claimant pursuant to NRS 690B.100 to 690B.180,
38 inclusive ~~†~~

39 ~~—(a) A claimant may not send a notice pursuant to NRS 40.645 or~~
40 ~~pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, unless~~
41 ~~the claimant has first submitted a claim under the homeowner's~~
42 ~~warranty and the insurer has denied the claim.~~

43 ~~—(b) A claimant may include in a notice given pursuant to NRS~~
44 ~~40.645 only claims for the constructional defects that were denied~~
45 ~~by the insurer.~~



1 ~~—(e)~~, a claimant shall diligently pursue a claim under the
2 *contract*. If coverage under a homeowner’s warranty is denied by an
3 insurer in bad faith, the homeowner and the contractor,
4 subcontractor, supplier or design professional have a right of action
5 for the sums that would have been paid if coverage had been
6 provided, plus reasonable attorney’s fees and costs.

7 ~~[(d) Statutes of limitation or repose applicable to a claim based~~
8 ~~on a constructional defect governed by NRS 40.600 to 40.695,~~
9 ~~inclusive, are tolled from the time notice of the claim under the~~
10 ~~homeowner’s warranty is submitted to the insurer until 30 days after~~
11 ~~the insurer rejects the claim, in whole or in part, in writing.]~~

12 4. Nothing in this section prohibits an offer of judgment
13 pursuant to Rule 68 of the Nevada Rules of Civil Procedure or
14 NRS 40.652.

15 **Sec. 13.** NRS 40.655 is hereby amended to read as follows:

16 40.655 1. Except as otherwise provided in NRS 40.650, in a
17 claim governed by NRS 40.600 to 40.695, inclusive, *and section 1*
18 *of this act*, the claimant may recover only the following damages to
19 the extent proximately caused by a constructional defect:

20 (a) *Any reasonable attorney’s fees;*

21 (b) The reasonable cost of any repairs already made that were
22 necessary and of any repairs yet to be made that are necessary to
23 cure any constructional defect that the contractor failed to cure and
24 the reasonable expenses of temporary housing reasonably necessary
25 during the repair;

26 ~~[(b)]~~ (c) The reduction in market value of the residence or
27 accessory structure, if any, to the extent the reduction is because of
28 structural failure;

29 ~~[(e)]~~ (d) The loss of the use of all or any part of the residence;

30 ~~[(d)]~~ (e) The reasonable value of any other property damaged
31 by the constructional defect;

32 ~~[(e)]~~ (f) Any additional costs reasonably incurred by the
33 claimant for constructional defects proven by the claimant,
34 including, but not limited to, any costs and fees incurred for the
35 retention of experts to:

36 (1) Ascertain the nature and extent of the constructional
37 defects;

38 (2) Evaluate appropriate corrective measures to estimate the
39 value of loss of use; and

40 (3) Estimate the value of loss of use, the cost of temporary
41 housing and the reduction of market value of the residence; and

42 ~~[(f)]~~ (g) Any interest provided by statute.

43 2. *The amount of any attorney’s fees awarded pursuant to*
44 *this section must be approved by the court.*



1 **3.** If a contractor complies with the provisions of NRS 40.600
2 to 40.695, inclusive, *and section 1 of this act*, the claimant may not
3 recover from the contractor, as a result of the constructional defect,
4 any damages other than damages authorized pursuant to NRS
5 40.600 to 40.695, inclusive ~~†~~

6 ~~—3†~~, *and section 1 of this act.*

7 **4.** This section must not be construed as impairing any
8 contractual rights between a contractor and a subcontractor, supplier
9 or design professional.

10 ~~††~~ **5.** As used in this section, “structural failure” means
11 physical damage to the load-bearing portion of a residence or
12 appurtenance caused by a failure of the load-bearing portion of the
13 residence or appurtenance.

14 **Sec. 14.** NRS 40.695 is hereby amended to read as follows:

15 40.695 1. Except as otherwise provided in subsections 2 and
16 3, statutes of limitation or repose applicable to a claim based on a
17 constructional defect governed by NRS 40.600 to 40.695, inclusive,
18 *and section 1 of this act* are tolled from the time notice of the claim
19 is given, until the earlier of:

20 (a) One year after notice of the claim is given; or

21 (b) Thirty days after mediation is concluded or waived in
22 writing pursuant to NRS 40.680.

23 2. Statutes of limitation and repose may be tolled under this
24 section for a period longer than 1 year after notice of the claim is
25 given only if, in an action for a constructional defect brought by a
26 claimant after the applicable statute of limitation or repose has
27 expired, the claimant demonstrates to the satisfaction of the court
28 that good cause exists to toll the statutes of limitation and repose
29 under this section for a longer period.

30 3. Tolling under this section applies to a third party regardless
31 of whether the party is required to appear in the proceeding.

32 **Sec. 15.** NRS 11.202 is hereby amended to read as follows:

33 11.202 1. ~~†No†~~ *Except as otherwise provided in this section,*
34 *no* action may be commenced against the owner, occupier or any
35 person performing or furnishing the design, planning, supervision or
36 observation of construction, or the construction of an improvement
37 to real property more than ~~†6†~~ **8** years after the substantial
38 completion of such an improvement, for the recovery of damages
39 for:

40 (a) Any deficiency in the design, planning, supervision or
41 observation of construction or the construction of such an
42 improvement; *or*

43 (b) Injury to real or personal property caused by any such
44 deficiency. ~~†; or†~~



1 ~~—(c) Injury to or the wrongful death of a person caused by any~~
2 ~~such deficiency.]~~

3 2. *An action for the recovery of damages may be commenced*
4 *against the owner, occupier or any person performing or*
5 *furnishing the design, planning, supervision or observation of*
6 *construction, or the construction of an improvement to real*
7 *property at any time after the substantial completion of such an*
8 *improvement for:*

9 (a) *Any deficiency in the design, planning supervision or*
10 *observation of construction or the construction of such an*
11 *improvement which is the result of his or her willful misconduct*
12 *or which he or she fraudulently concealed; or*

13 (b) *Injury to or the wrongful death of a person caused by any*
14 *such deficiency.*

15 3. The provisions of this section do not apply:

16 (a) To a claim for indemnity or contribution.

17 (b) In an action brought against:

18 (1) The owner or keeper of any hotel, inn, motel, motor
19 court, boardinghouse or lodging house in this State on account of his
20 or her liability as an innkeeper.

21 (2) Any person on account of a defect in a product.

22 **Sec. 16.** NRS 113.135 is hereby amended to read as follows:

23 113.135 1. Upon signing a sales agreement with the initial
24 purchaser of residential property that was not occupied by the
25 purchaser for more than 120 days after substantial completion of the
26 construction of the residential property, the seller shall:

27 (a) Provide to the initial purchaser a copy of NRS 11.202,
28 11.2055 and 40.600 to 40.695, inclusive ~~†~~, *and section 1 of this*
29 *act.*

30 (b) Notify the initial purchaser of any soil report prepared for the
31 residential property or for the subdivision in which the residential
32 property is located; and

33 (c) If requested in writing by the initial purchaser not later than
34 5 days after signing the sales agreement, provide to the purchaser
35 without cost each report described in paragraph (b) not later than 5
36 days after the seller receives the written request.

37 2. Not later than 20 days after receipt of all reports pursuant to
38 paragraph (c) of subsection 1, the initial purchaser may rescind the
39 sales agreement.

40 3. The initial purchaser may waive his or her right to rescind
41 the sales agreement pursuant to subsection 2. Such a waiver is
42 effective only if it is made in a written document that is signed by
43 the purchaser.



1 **Sec. 17.** NRS 116.3102 is hereby amended to read as follows:

2 116.3102 1. Except as otherwise provided in this chapter, and
3 subject to the provisions of the declaration, the association:

4 (a) Shall adopt and, except as otherwise provided in the bylaws,
5 may amend bylaws and may adopt and amend rules and regulations.

6 (b) Shall adopt and may amend budgets in accordance with the
7 requirements set forth in NRS 116.31151, may collect assessments
8 for common expenses from the units' owners and may invest funds
9 of the association in accordance with the requirements set forth in
10 NRS 116.311395.

11 (c) May hire and discharge managing agents and other
12 employees, agents and independent contractors.

13 (d) May institute, defend or intervene in litigation or in
14 arbitration, mediation or administrative proceedings in its own name
15 on behalf of itself or two or more units' owners on matters affecting
16 the common-interest community. ~~¶The association may not institute,
17 defend or intervene in litigation or in arbitration, mediation or
18 administrative proceedings in its own name on behalf of itself or
19 units' owners with respect to an action for a constructional defect
20 pursuant to NRS 40.600 to 40.695, inclusive, unless the action
21 pertains exclusively to common elements.¶~~

22 (e) May make contracts and incur liabilities. Any contract
23 between the association and a private entity for the furnishing of
24 goods or services must not include a provision granting the private
25 entity the right of first refusal with respect to extension or renewal
26 of the contract.

27 (f) May regulate the use, maintenance, repair, replacement and
28 modification of common elements.

29 (g) May cause additional improvements to be made as a part of
30 the common elements.

31 (h) May acquire, hold, encumber and convey in its own name
32 any right, title or interest to real estate or personal property, but:

33 (1) Common elements in a condominium or planned
34 community may be conveyed or subjected to a security interest only
35 pursuant to NRS 116.3112; and

36 (2) Part of a cooperative may be conveyed, or all or part of a
37 cooperative may be subjected to a security interest, only pursuant to
38 NRS 116.3112.

39 (i) May grant easements, leases, licenses and concessions
40 through or over the common elements.

41 (j) May impose and receive any payments, fees or charges for
42 the use, rental or operation of the common elements, other than
43 limited common elements described in subsections 2 and 4 of NRS
44 116.2102, and for services provided to the units' owners, including,



1 without limitation, any services provided pursuant to
2 NRS 116.310312.

3 (k) May impose charges for late payment of assessments
4 pursuant to NRS 116.3115.

5 (l) May impose construction penalties when authorized pursuant
6 to NRS 116.310305.

7 (m) May impose reasonable fines for violations of the governing
8 documents of the association only if the association complies with
9 the requirements set forth in NRS 116.31031.

10 (n) May impose reasonable charges for the preparation and
11 recordation of any amendments to the declaration or any statements
12 of unpaid assessments, and impose reasonable fees, not to exceed
13 the amounts authorized by NRS 116.4109, for preparing and
14 furnishing the documents and certificate required by that section.

15 (o) May provide for the indemnification of its officers and
16 executive board and maintain directors and officers liability
17 insurance.

18 (p) May assign its right to future income, including the right to
19 receive assessments for common expenses, but only to the extent the
20 declaration expressly so provides.

21 (q) May exercise any other powers conferred by the declaration
22 or bylaws.

23 (r) May exercise all other powers that may be exercised in this
24 State by legal entities of the same type as the association.

25 (s) May direct the removal of vehicles improperly parked on
26 property owned or leased by the association, as authorized pursuant
27 to NRS 487.038, or improperly parked on any road, street, alley or
28 other thoroughfare within the common-interest community in
29 violation of the governing documents. In addition to complying with
30 the requirements of NRS 487.038 and any requirements in the
31 governing documents, if a vehicle is improperly parked as described
32 in this paragraph, the association must post written notice in a
33 conspicuous place on the vehicle or provide oral or written notice to
34 the owner or operator of the vehicle at least 48 hours before the
35 association may direct the removal of the vehicle, unless the vehicle:

36 (1) Is blocking a fire hydrant, fire lane or parking space
37 designated for the handicapped; or

38 (2) Poses an imminent threat of causing a substantial adverse
39 effect on the health, safety or welfare of the units' owners or
40 residents of the common-interest community.

41 (t) May exercise any other powers necessary and proper for the
42 governance and operation of the association.

43 2. The declaration may not limit the power of the association to
44 deal with the declarant if the limit is more restrictive than the limit
45 imposed on the power of the association to deal with other persons.



1 3. The executive board may determine whether to take
2 enforcement action by exercising the association's power to impose
3 sanctions or commence an action for a violation of the declaration,
4 bylaws or rules, including whether to compromise any claim for
5 unpaid assessments or other claim made by or against it. The
6 executive board does not have a duty to take enforcement action if it
7 determines that, under the facts and circumstances presented:

8 (a) The association's legal position does not justify taking any or
9 further enforcement action;

10 (b) The covenant, restriction or rule being enforced is, or is
11 likely to be construed as, inconsistent with current law;

12 (c) Although a violation may exist or may have occurred, it is
13 not so material as to be objectionable to a reasonable person or to
14 justify expending the association's resources; or

15 (d) It is not in the association's best interests to pursue an
16 enforcement action.

17 4. The executive board's decision under subsection 3 not to
18 pursue enforcement under one set of circumstances does not prevent
19 the executive board from taking enforcement action under another
20 set of circumstances, but the executive board may not be arbitrary or
21 capricious in taking enforcement action.

22 5. Notwithstanding any provision of this chapter or the
23 governing documents to the contrary, an association may not impose
24 any assessment pursuant to this chapter or the governing documents
25 on the owner of any property in the common-interest community
26 that is exempt from taxation pursuant to NRS 361.125. For the
27 purposes of this subsection, "assessment" does not include any
28 charge for any utility services, including, without limitation,
29 telecommunications, broadband communications, cable television,
30 electricity, natural gas, sewer services, garbage collection, water or
31 for any other service which is delivered to and used or consumed
32 directly by the property in the common-interest community that is
33 exempt from taxation pursuant to NRS 361.125.

34 **Sec. 18.** 1. The provisions of NRS 40.615 and 40.655, as
35 amended by sections 4 and 13 of this act, apply to any claim that
36 arises on or after October 1, 2017.

37 2. Section 1 of this act, and the provisions of NRS 40.645 and
38 40.650, as amended by sections 6 and 12 of this act, apply to a
39 notice of constructional defect given on or after October 1, 2017.

40 3. The provisions of NRS 40.647, as amended by section 9 of
41 this act, apply only to an inspection conducted pursuant to NRS
42 40.6462, as amended by section 8 of this act, on or after October 1,
43 2017.

44 4. The period of limitations on actions set forth in NRS 11.202,
45 as amended by section 15 of this act, applies retroactively to actions



- 1 in which the substantial completion of the improvement to the real
- 2 property occurred before October 1, 2017.

③

