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PROPOSED AMENDMENTS TO
SENATE BILL NO. 241

May 8, 2003

Purpose: The purpose of this amendment is to more fully include master developers and subdividers within the scope of the act.

Proposed amendments submitted by:

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Sec. 10. 1. "Constructional defect" means a defect in the design, construction, manufacturing, alteration, improvement, repair or landscaping of:

(a) A new residence or a new appurtenance; or

(b) An existing residence or an existing appurtenance, when the existing residence or existing appurtenance is changed, altered, added to or improved by a construction project.

2. The term includes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed that is proximately caused by a constructional defect.

3. The term does not include:

(a) Any design, construction, manufacturing, alteration, improvement, repair or landscaping for which a master developer, subdivider, contractor, subcontractor, supplier or design professional cannot be held liable pursuant to section 24 of this act; or

(b) Any act, omission, condition or damage for which a master developer, subdivider, contractor, subcontractor, supplier or design professional cannot be held liable pursuant to section 25 of this act.

Sec. 11. "Contractor" means a person who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:

1. Develops, designs, constructs, manufactures, alters, improves, repairs or landscapes a residence, appurtenance or any part thereof;

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2. Develops a site for a residence, appurtenance or any part thereof; or

3. Sells a residence or appurtenance, any part of which the person, by himself or through his agents, employees or subcontractors, has developed, designed, constructed, manufactured, altered, improved, repaired or landscaped.

4. The term includes a subdivider or master developer who engages in any of the aforementioned activities.

Sec. 14. 1. "Homeowner's warranty" means a warranty or policy of insurance:

(a) Issued or purchased by or on behalf of a master developer, subdivider, contractor, subcontractor, supplier or design professional for the protection of a claimant; or

(b) Purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive.

2. The term includes a warranty contract issued by a risk retention group that operates in compliance with chapter 695E of NRS and insures all or any part of the liability of a master developer, subdivider, contractor, subcontractor, supplier or design professional for the cost to repair a constructional defect.

Sec. 24. 1. A master developer, subdivider, contractor, subcontractor, supplier or design professional is not liable for any design, construction, manufacturing, alteration, improvement, repair or landscaping that:

(a) Is functioning as intended and was completed in compliance with the provisions of the applicable building codes in effect when it was completed; or

(b) Is not the proximate cause of any damage or injury.

2. For the purposes of this section, the approval of any design, construction, manufacturing, alteration, improvement, repair or landscaping by a building inspector is prima facie evidence that the design, construction, manufacturing, alteration, improvement, repair or landscaping was completed in compliance with the provisions of the applicable building codes in effect when it was completed.

Sec. 25. 1. A master developer, subdivider, contractor, subcontractor, supplier or design professional:

(a) Is liable only for damages that are proximately caused by his own acts or omissions or the acts or omissions of his agents, employees or subcontractors; and

(b) Is not liable for damages that are proximately caused by:

(1) The acts or omissions of any other person; or

(2) The failure of any other person to take reasonable action to maintain a residence or appurtenance or to reduce or mitigate any damage or injury.

2. A master developer, subdivider, contractor, subcontractor, supplier or design professional is not liable for:

(a) Normal wear, tear or deterioration; or

(b) Normal shrinkage, swelling, expansion or settlement.

3. A master developer, subdivider, contractor, subcontractor, supplier or design

professional is not liable for any constructional defect that is disclosed to an owner before his purchase of the residence, if the disclosure was provided in language that is understandable and was written in underlined and boldfaced type with capital letters.

Sec. 26. 1. Except as otherwise provided in this chapter, a claimant may not bring a cause of action for a constructional defect or amend a complaint to add a cause of action for a constructional defect against a master developer, subdivider contractor, subcontractor, supplier or design professional, unless the claimant has:

- (a) Complied with the procedures concerning notice set forth in this chapter with regard to each constructional defect that forms the basis of the cause of action;**
- (b) Complied with the procedures concerning repairs set forth in this chapter with regard to each constructional defect that forms the basis of the cause of action; and**
- (c) Complied with the procedures concerning mediation set forth in this chapter with regard to each constructional defect that forms the basis of the cause of action.**

2. If a claimant brings a cause of action for a constructional defect in violation of this section or amends a complaint to add a cause of action for a constructional defect in violation of this section, the court does not have jurisdiction to hear the subject matter of the cause of action and the court shall dismiss the cause of action without prejudice. The provisions of this section do not preclude the court from dismissing the cause of action with prejudice for reasons other than a violation of this section.

Sec. 27. 1. Except as otherwise provided in this chapter, before a claimant may bring a cause of action for a constructional defect or amend a complaint to add a cause of action for a constructional defect against a master developer, subdivider, contractor, subcontractor, supplier or design professional, the claimant must provide the contractor for the construction project with written notice of each constructional defect that forms the basis of the cause of action. To provide such written notice, the claimant must:

- (a) Use the standard form for providing notice of a constructional defect;**
- (b) List on the standard form each master developer, subdivider, contractor, subcontractor, supplier and design professional who may be liable for the constructional defect and whose identity is known by the claimant; and**
- (c) Send the standard form by registered mail, return receipt requested, to:
 - (1) The last known address of the contractor; or**
 - (2) The address of the contractor that is listed in the records of the State Contractors' Board, the office of the county recorder for the county where the work was performed, or the office of the clerk that issues business licenses for the county or city where the work was performed.****

2. If, before the claimant provides written notice to the contractor for the construction project, the claimant knows that

the contractor for the construction project is no longer in business as a contractor, the claimant shall provide written notice to each master developer, subdivider, subcontractor, supplier and design professional who may be liable for the constructional defect and whose identity is known by the claimant. To provide such written notice, the claimant must:

(a) Use the standard form for providing notice of a constructional defect;

(b) List on the standard form each master developer, subdivider, contractor, subcontractor, supplier and design professional who may be liable for the constructional defect and whose identity is known by the claimant; and

(c) Send the standard form by registered mail, return receipt requested, to:

(1) The last known address of the master developer, subdivider, subcontractor, supplier or design professional; or

(2) The address of the master developer, subdivider, subcontractor, supplier or design professional that is listed in the records of the State Contractors' Board, the office of the county recorder for the county where the work was performed, or the office of the clerk that issues business licenses for the county or city where the work was performed.

3. A master developer, subdivider, subcontractor, supplier or design professional who receives written notice from a claimant pursuant to this section is entitled to the same rights to repair the constructional defect that are afforded to a contractor pursuant to this chapter.

4. A representative of a homeowners' association that is responsible for a residence or appurtenance may not provide the written notice required by this section, unless the representative is acting within the scope of his authority under the law and the governing documents for the homeowners' association and has obtained an affirmative vote of at least a simple majority of the members of the association.

5. The State Contractors' Board shall:

(a) Develop a standard form for providing notice of a constructional defect for the purposes of this section; and

(b) Make the standard form available to claimants.

Sec. 28. 1. After the claimant sends written notice of a constructional defect pursuant to section 27 of this act, the claimant, upon reasonable notice, shall provide the contractor for the construction project and each master developer, subdivider, subcontractor, supplier or design professional who may be liable for the constructional defect with access to the residence or appurtenance where the constructional defect is located for the purposes of inspecting the residence or appurtenance to determine the nature and extent of the constructional defect and the nature and extent of any repairs that may be necessary.

2. The claimant shall provide the access required by this section not later than 60 days after the date that written notice is sent to the contractor pursuant to section 27 of this act or, if written notice is sent to a master developer, subdivider, subcontractor, supplier or design

professional pursuant to that section, not later than 60 days after the date that written notice is sent to the master developer, subdivider, subcontractor, supplier or design professional.

Sec. 29. 1. Not later than 30 days after the date that written notice of a constructional defect is received by the contractor for the construction project pursuant to section 27 of this act, the contractor shall provide a copy of the written notice to each master developer, subdivider, subcontractor, supplier or design professional who the contractor reasonably believes may be liable for the constructional defect. The contractor must send the copy by registered mail, return receipt requested, to:

(a) The last known address of the master developer, subdivider, subcontractor, supplier or design professional; and

(b) The address of the master developer, subdivider, subcontractor, supplier or design professional that is listed in the contract between the contractor and the subcontractor, supplier or design professional.

2. Not later than 15 days after the date of the inspection of the constructional defect, the master developer, subdivider, subcontractor, supplier or design professional shall provide the contractor with:

(a) A written statement indicating whether the master developer, subdivider, subcontractor, supplier or design professional has elected to repair the constructional defect; and

(b) If such an election is made:

(1) A written estimate as to the length of time to complete the repairs and at least two proposed dates and times when the repairs will begin; and

(2) A written statement waiving all rights to file mechanics' and materialmen's liens against the residence and its appurtenances pursuant to NRS 108.221 to 108.246, inclusive, with regard to the repairs performed pursuant to this chapter.

3. Except as otherwise provided in this chapter, the contractor may not pursue any claim related to the constructional defect against a master developer, subdivider, subcontractor, supplier or design professional who is liable for the constructional defect, unless the contractor has provided the master developer, subdivider, subcontractor, supplier or design professional with:

(a) A copy of the written notice from the claimant as required by this section; and

(b) A reasonable opportunity to repair the constructional defect.

4. The contractor may pursue a claim related to the constructional defect against a master developer, subdivider, subcontractor, supplier or design professional who is liable for the constructional defect if the contractor:

(a) Made a good faith effort to discover the identity of the master developer, subdivider, subcontractor, supplier or design professional after the contractor received written notice of the constructional defect from the claimant; and

(b) Was unable to discover the identity of the master developer, subdivider, subcontractor, supplier or design professional within the 30-day period for

providing a copy of the written notice to the master developer, subdivider, subcontractor, supplier or design professional.

Sec. 30. 1. Not later than 90 days after the date that written notice is sent to the contractor pursuant to section 27 of this act or, if written notice is sent to a master developer, subdivider, subcontractor, supplier or design professional pursuant to that section, not later than 90 days after the date that written notice is sent to the subcontractor, supplier or design professional, the master developer, subdivider, contractor, subcontractor, supplier or design professional, as appropriate, shall provide the claimant with a written statement indicating whether the master developer, subdivider, contractor, subcontractor, supplier or design professional has elected to repair the constructional defect.

2. Except as otherwise provided in this chapter:

(a) If the master developer, subdivider, contractor, subcontractor, supplier or design professional has elected not to repair the constructional defect, the claimant may bring a cause of action for the constructional defect or amend a complaint to add a cause of action for the constructional defect.

(b) If the master developer, subdivider, contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the claimant must provide the master developer, subdivider, contractor, subcontractor, supplier or design professional with a reasonable opportunity to repair the constructional defect.

3. If the master developer, subdivider, contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the contractor, subcontractor, supplier or design professional must:

(a) Either perform the repairs, but only if he is properly licensed, bonded and insured to perform the repairs, or have the repairs performed by a properly licensed, bonded and insured contractor or subcontractor;

(b) Perform the repairs or have the repairs performed at reasonable dates and times that are agreed to in advance with the claimant;

(c) Complete the repairs or have the repairs completed within a reasonable period as required by the provisions of this section;

(d) Not later than 30 days after the repairs are completed, provide the claimant with a written statement indicating the nature and extent of the repairs, the methods that were used to perform the repairs and the nature and extent of any materials or parts that were replaced; and

(e) Ensure that all master developer, subdivider, contractors, subcontractors and suppliers are paid for any labor performed or materials furnished for the repairs so that there are no mechanics' and materialmen's liens filed against the residence and its appurtenances pursuant to NRS 108.221 to 108.246, inclusive, and indemnify the claimant against all such liens.

4. Except as otherwise provided in this chapter, the master developer, subdivider, contractor, subcontractor, supplier or design professional must complete or have the repairs completed not later than 150 days after the date that written notice of the constructional defect is

sent to the contractor pursuant to section 27 of this act or, if written notice is sent to the master developer, subdivider, subcontractor, supplier or design professional pursuant to that section, not later than 150 days after the date that written notice is sent to the master developer, subdivider, subcontractor, supplier or design professional.

5. The master developer, subdivider, contractor, subcontractor, supplier or design professional is not required to complete or have the repairs completed within the period set forth in subsection 4 if:

(a) Completion of the repairs is delayed by the claimant or by other events beyond the control of the master developer, subdivider, contractor, subcontractor, supplier or design professional; or

(b) Timely completion of the repairs is not reasonably possible. If timely completion of the repairs is not reasonably possible, the claimant and the master developer, subdivider, contractor, subcontractor, supplier or design professional must negotiate in good faith to set a reasonable period for completion of the repairs.

6. The claimant and any master developer, subdivider, contractor, subcontractor, supplier or design professional may agree in writing to extend the periods prescribed by this section and sections 28 and 29 of this act.

Sec. 31. 1. If the claimant disputes the method or adequacy of any repairs that are performed pursuant to section 30 of this act, the claimant or the master developer, subdivider, contractor, subcontractor, supplier or design professional who performed or had the repairs performed may submit the dispute to the State Contractors' Board.

2. If a dispute is submitted to the State Contractors' Board pursuant to this section, the State Contractors' Board shall, pursuant to its regulations, rules and procedures, investigate the dispute and render a decision concerning:

(a) Whether the method used to perform the repairs was appropriate; and

(b) Whether the repairs were performed adequately in a good and workmanlike manner and in accordance with applicable law.

3. The decision of the State Contractors' Board:

(a) Is not subject to judicial review pursuant to the provisions of chapters 233B and 624 of NRS; and

(b) Is admissible in any action brought pursuant to the provisions of this chapter.

4. The provisions of this chapter do not preclude a claimant or a master developer, subdivider, contractor, subcontractor, supplier or design professional from pursuing any remedy otherwise available from the State Contractors' Board pursuant to the provisions of chapter 624 of NRS concerning a constructional defect.

5. If a claimant or a master developer, subdivider, contractor, subcontractor, supplier or design professional pursues any remedy available from the State Contractors' Board pursuant to the provisions of this section or chapter 624 of NRS concerning a constructional defect, no person may bring a cause of action for the constructional defect or, if such a cause of action already has been brought in a court of competent jurisdiction, no further court proceedings may be held concerning the cause of action until the State Contractors' Board

renders a decision in the matter.

Sec. 32. 1. Any statutes of limitation or statutes of repose applicable to a cause of action for a constructional defect are tolled during the following periods:

(a) From the date that the claimant sends written notice of the constructional defect pursuant to section 27 of this act until:

(1) Sixty days after the date that the period for completion of the repairs has expired pursuant to this chapter; or

(2) If the parties by mutual agreement have set a later date for the completion of the repairs, 60 days after the later date.

(b) During any period in which the constructional defect is the subject of an administrative proceeding that is pending before the State Contractors' Board.

(c) During any period in which the constructional defect is the subject of a mediation that is pending.

2. The tolling of any applicable statutes of limitation or statutes of repose pursuant to this section:

(a) Applies only to the specific constructional defect that is the subject of the repairs, the administrative proceeding pending before the State Contractors' Board or the mediation; and

(b) Does not apply to any other constructional defect, regardless of whether the other constructional defect is in the same residence or appurtenance.

3. If any applicable statutes of limitation or statutes of repose are tolled pursuant to this section, that tolling applies to the claimant and to each master developer, subdivider, contractor, subcontractor, supplier or design professional who may be liable for the constructional defect.

Sec. 33. 1. If a master developer, subdivider, contractor, subcontractor, supplier or design professional receives written notice of a constructional defect pursuant to this chapter, the master developer, subdivider, contractor, subcontractor, supplier or design professional may present the claim to an insurer which has issued a policy of insurance that covers all or any portion of the business of the master developer, subdivider, contractor, subcontractor, supplier or design professional.

2. If the master developer, subdivider, contractor, subcontractor, supplier or design professional presents the claim to the insurer pursuant to this section, the insurer:

(a) Must treat the claim as if a civil action has been brought against the master developer, subdivider, contractor, subcontractor, supplier or design professional; and

(b) Must provide coverage under the policy of insurance as if a civil action has been brought against the master developer, subdivider, contractor, subcontractor, supplier or design professional.

3. A master developer, subdivider, contractor, subcontractor, supplier or design professional is not required to present a claim to the insurer pursuant to this section, and the failure to present such a claim to the insurer does not relieve the insurer of any duty under the policy of insurance to the master developer, subdivider, contractor, subcontractor, supplier or design professional.

Sec. 34. 1. If a claimant brings a cause of action for a

constructional defect or amends a complaint to add a cause of action for a constructional defect against the contractor for the construction project, any master developer, subdivider, subcontractor, supplier or design professional who is liable for the constructional defect and who did not receive written notice of the constructional defect pursuant to section 27 or 29 of this act may make directly to the claimant an offer to repair the constructional defect.

2. Except as otherwise provided in this section, if the claimant accepts the offer of the master developer, subdivider, subcontractor, supplier or design professional, the contractor may not pursue any claim related to the constructional defect against the master developer, subdivider, subcontractor, supplier or design professional if:

(a) The master developer, subdivider, subcontractor, supplier or design professional has the constructional defect repaired to the satisfaction of the claimant; and

(b) The claimant provides a written statement to the master developer, subdivider, subcontractor, supplier or design professional which indicates that the constructional defect has been repaired to the satisfaction of the claimant and which releases all claims against the master developer, subdivider, contractor, subcontractor, supplier or design professional with regard to the constructional defect.

3. Notwithstanding the provisions of subsections 1 and 2, the contractor may pursue a claim related to the constructional defect against the master developer, subdivider, subcontractor, supplier or design professional if the contractor:

(a) Made a good faith effort to discover the identity of the master developer, subdivider, subcontractor, supplier or design professional after the contractor received written notice of the constructional defect from the claimant; and

(b) Was unable to discover the identity of the master developer, subdivider, subcontractor, supplier or design professional within the 30-day period for providing a copy of the written notice to the master developer, subdivider, subcontractor, supplier or design professional.

Sec. 37. 1. In addition to the other requirements of this chapter, a claimant may not bring a cause of action for a constructional defect or amend a complaint to add a cause of action for a constructional defect against a master developer, subdivider, contractor, subcontractor, supplier or design professional, unless:

(a) The matter is first submitted to a mediation; or

(b) The claimant and the other parties agree, in writing, to waive the mediation.

2. If the matter is submitted to a mediation, the mediator must be selected by an agreement between the claimant and the other parties. If the claimant and the other parties fail to agree upon a mediator within 45 days after a mediator is first selected by the claimant, the claimant or any other party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator.

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3. The mediator shall commence the mediation within 60 days after the matter is submitted to him, unless the claimant and the other parties agree to extend the time for the commencement of the mediation.

4. Before the mediation begins:

(a) The claimant shall deposit \$50 with the mediation service; and

(b) The other parties shall deposit with the mediation service the remaining amount estimated by the mediation service as necessary to pay the fees and expenses of the mediator for the first session of the mediation. The other parties shall deposit additional amounts demanded by the mediation service as incurred for that purpose.

5. The total fees for each day of the mediation and the mediator must not exceed \$750 per day, unless the claimant and the other parties agree to a different amount.

6. The mediator may discover only those documents or materials which are necessary to conduct the mediation.

7. Not later than 15 days before the mediation begins and upon providing 15 days' notice, each party shall provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the constructional defect to the extent that such documents or materials are not privileged.

Sec. 44. 1. If a constructional defect is part of a residence or appurtenance which is covered by a homeowner's warranty that has been purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive, the claimant shall diligently pursue a claim under the homeowner's warranty.

2. If the claimant is paid any money under the homeowner's warranty for the constructional defect, the amount paid to the claimant under the homeowner's warranty must be deducted from any amount that the claimant recovers from a master developer, subdivider, contractor, subcontractor, supplier or design professional for the constructional defect. The provisions of this subsection do not apply to any amount paid to the claimant in satisfaction of claims that are collateral to any coverage issued to or by the master developer, subdivider, contractor, subcontractor, supplier or design professional.

3. If an insurer, in bad faith, denies coverage under a homeowner's warranty, the claimant and each master developer, subdivider, contractor, subcontractor, supplier or design professional who is liable for the constructional defect may bring a cause of action against the insurer to recover:

(a) The money that would have been paid under the homeowner's warranty if the coverage had been provided; and

(b) Reasonable attorney's fees and costs.

Sec. 45. 1. Not later than 10 days after bringing a cause of

action or amending a complaint to add a cause of action for a constructional defect against a master developer, subdivider, contractor, subcontractor, supplier or design professional, the claimant shall disclose all information about any homeowner's warranty that is applicable to the cause of action.

2. Not later than 10 days after the claimant's disclosure, the master developer, subdivider, contractor, subcontractor, supplier or design professional shall disclose any information about insurance agreements that may be obtained by discovery pursuant to Rule 26(b)(2) of the Nevada Rules of Civil Procedure. Such disclosure does not affect the admissibility at trial of the information disclosed.

3. Except as otherwise provided in subsection 4, if any party fails to provide the information required pursuant to subsection 1 or 2 within the time allowed, any party who is aggrieved by the failure may petition the court to compel production of the information. Upon receiving such a petition, the court may order the party to produce the required information and may award the petitioning party reasonable attorney's fees and costs incurred in petitioning the court pursuant to this subsection.

4. The parties may agree to an extension of time to produce the information required pursuant to this section.

5. If there is a conflict between the provisions of this section and the provisions of any other statute or any court rule or any principle of the common law or equity, the provisions of this section prevail and must be interpreted to supersede any other provisions or principles that are in conflict with the provisions of this section.

6. As used in this section, "information about insurance agreements" means any declaration sheets, endorsements and contracts of insurance issued to the master developer, subdivider, contractor, subcontractor, supplier or design professional from the commencement of construction of the residence or appurtenance to the date on which the request for the information is made. The term does not include any information concerning any disputes between the master developer, subdivider, contractor, subcontractor, supplier or design professional and the insurer, or any information concerning any reservation of rights by the insurer.

Sec. 48. 1. In addition to any other method for settling a claim for a constructional defect, a master developer, subdivider, contractor, subcontractor, supplier or design professional may enter into a written agreement with the claimant to settle the claim by repurchasing the claimant's residence and the real property upon which it is located.

2. The agreement may include provisions which reimburse the claimant for:

(a) The market value of the residence as if no constructional defect existed, except that if a residence is less than 2 years of age and was purchased from the contractor against whom the claim is brought, the market value is the price at which the residence was

sold to the claimant;

(b) The value of any improvements made to the property by a person other than the master developer, subdivider, contractor, subcontractor, supplier or design professional;

(c) Reasonable attorney's fees and fees for experts; and

(d) Any other costs, including, without limitation:

(1) Costs and expenses for moving; and

(2) Costs, points and fees for loans.

Sec. 49. 1. If a master developer, subdivider, contractor, subcontractor, supplier or design professional is found liable to the claimant for a cause of action for a constructional defect, the claimant is entitled to recover only the damages set forth in this section to the extent those damages are proximately caused by the constructional defect.

2. The claimant is entitled to recover the lesser of:

(a) The reasonable cost of any repairs already made that were necessary and of any repairs yet to be made that are necessary to cure the constructional defect to the extent that the master developer, subdivider, contractor, subcontractor, supplier or design professional failed to cure the constructional defect, plus the reasonable expenses of any temporary housing that was or will be reasonably necessary during any such repairs; or

(b) The diminution in the value of the residence, appurtenance or other property resulting from the constructional defect to the extent that the master developer, subdivider, contractor, subcontractor, supplier or design professional failed to cure the constructional defect.

3. The claimant is entitled to recover the reasonable value of any other property damaged by the constructional defect.

4. The claimant is entitled to recover any interest provided by statute, except that the claimant is not entitled to recover any prejudgment interest if the claimant is using present value as the basis for determining the cost of repairs or the amount of the damages.

Sec. 50. 1. For each cause of action for a constructional defect, the court shall determine which party is the prevailing party for the cause of action. A prevailing party is entitled to recover:

(a) Reasonable attorney's fees; and

(b) Any other fees and costs reasonably incurred by the prevailing party, including, without limitation, any fees and costs incurred for the retention of experts.

2. For the purposes of this section, the claimant is not a prevailing party and is not entitled to recover any attorney's fees or other fees and costs with regard to a cause of action for a constructional defect if the court finds that there is no master developer, subdivider, contractor, subcontractor, supplier or design professional who is liable to the claimant for the constructional defect.

3. For the purposes of this section, if the claimant rejects any offer or any best and final offer made by a master developer, subdivider, contractor, subcontractor, supplier or design professional, and if the final

judgment in the action is less favorable to the claimant than the offer or the best and final offer rejected by the claimant, the master developer, subdivider, contractor, subcontractor, supplier or design professional who made the offer or the best and final offer shall be deemed to be the prevailing party beginning on the date that the offer or the best and final offer was rejected by the claimant. If the final judgment in the action is more favorable to the claimant than the offer or best and final offer rejected by the claimant, the claimant shall be deemed to be the prevailing party beginning on the date that the offer or the best and final offer was rejected by the claimant.

4. Any party may challenge the reasonableness of any attorney's fees or other fees and costs requested pursuant to this section.

5. Any party may submit an offer to repair a constructional defect or to settle a claim directly to the claimant. In such an offer, the party may reserve the right to challenge the reasonableness of any attorney's fees or other fees and costs. An attorney who represents the claimant shall not refuse to present an offer to the claimant because the offer contains a reservation of rights to challenge the reasonableness of any attorney's fees or other fees and costs.

6. The court is given the discretion to determine the reasonableness of any attorney's fees or other fees and costs requested pursuant to this section, and the court must approve the reasonableness of any attorney's fees or other fees and costs before they are awarded to the claimant or any other party.

7. In determining the reasonableness of any attorney's fees or other fees and costs, the court:

(a) Must multiply the number of hours reasonably spent on the case by a reasonable hourly rate as determined by the court;

(b) Must take into account the nature and the extent of the risk involved in prosecuting or defending the cause of action and the necessity of agreeing to a contingency arrangement to procure competent counsel; and

(c) May consider the extent to which the attorney's fees or other fees and costs are based on causes of action for which the claimant prevailed and did not prevail.

8. A determination made by the court relating to the reasonableness of any attorney's fees or other fees and costs:

(a) Is binding upon the attorney; and

(b) Controls over any conflicting provision set forth in a contract or other agreement entered into between the attorney and the party.

9. The provisions of this chapter:

(a) Do not prohibit a party from making an offer of judgment pursuant to NRS 17.115 or Rule 68 of the Nevada Rules of Civil Procedure or obtaining an award of attorney's fees or other fees and costs pursuant thereto;

(b) Do not prevail over, but must be applied in addition to, any other statute or court rule relating to the settlement of claims or

the award of attorney's fees or other fees and costs; and

(c) Do not impair any right of a master developer, subdivider, contractor, subcontractor, supplier or design professional to enter into or enforce any contract or agreement providing for the recovery of attorney's fees or other fees and costs from another master developer, subdivider, contractor, subcontractor, supplier or design professional.

Sec. 51. 1. *Notwithstanding any other provision of this chapter, a claimant or a master developer, subdivider, contractor, subcontractor, supplier or design professional may not bring any claim relating to a constructional defect against a government, governmental agency or political subdivision of a government during the period in which the claim is being settled, mediated or otherwise resolved pursuant to the provisions of this chapter.*

2. *The settlement of any claim relating to a constructional defect does not affect the rights or obligations of the claimant or any master developer, subdivider, contractor, subcontractor, supplier or design professional in any action brought by the claimant or the master developer, subdivider, contractor, subcontractor, supplier or design professional against a third party.*

Sec. 53. 1. *If a claimant attempts to sell a residence that is or has been the subject of a cause of action for a constructional defect, the claimant shall disclose, in writing, to any prospective purchaser of the residence:*

(a) All notices which the claimant has given to a master developer, subdivider, contractor, subcontractor, supplier or design professional regarding the constructional defect that is or has been the subject of the cause of action;

(b) All opinions which the claimant has obtained from experts regarding the constructional defect that is or has been the subject of the cause of action;

(c) The terms of any settlement, order or judgment relating to the cause of action; and

(d) A detailed report of all repairs made to the residence by or on behalf of the claimant as a result of the constructional defect that is or has been the subject of the cause of action.

2. *The claimant shall provide the disclosure required by this section:*

(a) Not less than 30 days before the close of escrow for the sale of the residence, if escrow is to close more than 30 days after the execution of the sales agreement;

(b) Immediately upon the execution of the sales agreement, if escrow is to close not more than 30 days after the execution of the sales agreement; or

(c) Within 24 hours after sending written notice to a master developer, subdivider, contractor, subcontractor, supplier or design professional pursuant to section 27 of this act, if the claimant sends such notice after the execution of the sales agreement.

3. *Before taking any action on a claim for a constructional defect pursuant to this chapter, the attorney for the claimant shall*

notify the claimant in writing of the provisions of this section.

Sec. 54. NRS 40.635 is hereby amended to read as follows:

40.635 1. *The provisions of NRS 40.600 to 40.695, inclusive* ~~+~~

~~1. Apply~~, *apply to any claim for a constructional defect that arises before, on or after July 1, 1995, [as the result of a constructional defect, except a claim for personal injury or wrongful death, if the claim is the subject of] and before the effective date of this act, if the claimant:*

(a) Has commenced an action [commenced] concerning the claim pursuant to NRS 40.600 to 40.695, inclusive, on or after July 1, 1995[+], and before the effective date of this act; or

(b) Has provided notice of the claim to the master developer, subdivider, contractor, subcontractor, supplier or design professional pursuant to NRS 40.600 to 40.695, inclusive, before the effective date of this act.

2. *The provisions of NRS 40.600 to 40.695, inclusive:*

(a) Prevail over any conflicting law otherwise applicable to the claim or cause of action.

~~3.~~ *(b) Do not bar or limit any defense otherwise available except as otherwise provided in those sections.*

~~4.~~ *(c) Do not create a new theory upon which liability may be based.*

3. *The provisions of NRS 40.600 to 40.695, inclusive, do not apply to:*

(a) A claim for personal injury or wrongful death; or

(b) A claim that is subject to the provisions of sections 2 to 53, inclusive, of this act.

Sec. 58. Notwithstanding the provisions of section 31 of this act, a claimant or a master developer, subdivider, contractor, subcontractor, supplier or design professional may not submit a dispute to the State Contractors' Board pursuant to the provisions of section 31 of this act before October 1, 2003.