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To: Chairman Anderson and
Members of the Assembly Judiciary Committee

From: Scott Canepa
Bob Crowell
Bob Maddox

Date: May 15, 2003

Re: Construction Defect Update

Earlier today we sent you via email our proposed amendments to Chapter 40.600 incorporating a mandatory repair right for contractors. The mandatory right to repair provisions in our proposal are a nearly verbatim recitation of the right to repair provisions found in AB 133 (R2) distributed to you earlier by Chairman Anderson. We do not oppose a mandatory repair right and believe our proposal meets the objectives voiced by the committee when it declined to process AB 446 & AB 449 earlier this session.

The primary sticking point is the Coalition's desire to repeal NRS 40.645, 40.650 and 40.692. These provisions are attached hereto. They are important consumer provisions that NTLA cannot, respectfully, in good faith agree to repeal. They are largely self-explanatory and go to the heart of getting homes fixed timely and properly without unfair burdens on homeowners. Like AB 133 (R2), these sections are retained in NTLA's proposed amendments to Chapter 40.

We are available to discuss these issues further with you at your convenience.

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ASSEMBLY JUDICIARY
DATE: 5/16/03 ROOM: 3138 EXHIBIT E
SUBMITTED BY: Scott Canepa

NRS 40.645 Written notice to contractor required before claimant commences certain actions; contents of notice; inspection by contractor; pursuit of claim under warranty; written response by contractor required; mutual duty to disclose documentary evidence. Except as otherwise provided in this section and NRS 40.670:

1. For a claim that is not a complex matter, at least 60 days before a claimant commences an action against a contractor for damages arising from a constructional defect, the claimant must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim. The notice must describe in reasonable detail the cause of the defects if the cause is known, the nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each residence or appurtenance to the extent known. An expert opinion concerning the cause of the defects and the nature and extent of the damage or injury resulting from the defects based on a representative sample of the components of the residences and appurtenances involved in the action satisfies the requirements of this section. During the 45-day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the claim to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor shall, before making the inspection, provide reasonable notice of the inspection and shall make the inspection at a reasonable time. The contractor may take reasonable steps to establish the existence of the defect.

2. If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant shall diligently pursue a claim under the contract.

3. Within 60 days after the contractor receives the notice, the contractor shall make a written response to the claimant. The response:

(a) Must be served to the claimant by certified mail, return receipt requested, at the claimant's last known address.

(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and, unless the response is limited to a proposal for monetary compensation, the method, adequacy and estimated cost of any proposed repair.

(c) May include:

(1) A proposal for monetary compensation, which may include a contribution from a subcontractor.

(2) If the contractor or his subcontractor is licensed to make the repairs, an agreement by the contractor or subcontractor to make the repairs.

(3) An agreement by the contractor to cause the repairs to be made, at the contractor's expense, by another contractor who is licensed to make the repairs, bonded and insured.

The repairs must be made within 45 days after the contractor receives written notice of acceptance of the response, unless completion is delayed by the claimant or by other events beyond the control of the contractor, or timely completion of the repairs is not reasonably possible. The claimant and the contractor may agree in writing to extend the periods prescribed by this section.

4. Not later than 15 days before the mediation required pursuant to NRS 40.680 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 claim that are not privileged.

5. If the claimant is a representative of a homeowner's association, the association shall submit any response made by the contractor to each member of the association.

6. As used in this section, "subcontractor" means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.

(Added to NRS by 1995, 2540; A 1997, 2718; 1999, 1440)

NRS 40.650 Effect of rejecting reasonable offer of settlement or denying opportunity to repair defect; effect of payment under warranty; effect of contractor failing to take certain actions; effect of bad faith denial of coverage under warranty.

1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response made pursuant to NRS 40.645 or 40.682 or does not permit the contractor or independent contractor a

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reasonable opportunity to repair the defect pursuant to an accepted offer of settlement and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, the court in which the action is commenced may:

- (a) Deny the claimant's attorney's fees and costs; and
- (b) Award attorney's fees and costs to the contractor.

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

2. If a contractor fails to:

- (a) Make an offer of settlement;
- (b) Make a good faith response to the claim asserting no liability;
- (c) Complete, in a good and workmanlike manner, the repairs specified in an accepted offer;
- (d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680 or subsection

4 of NRS 40.682; or

- (e) Participate in mediation,

the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, do not apply and the claimant may commence an action without satisfying any other requirement of NRS 40.600 to 40.695, inclusive.

3. If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

(Added to NRS by 1995, 2541; A 1997, 2719; 1999, 1442)

NRS 40.692 Procedural requirements waived for certain defects included in amended complaint; joinder or intervention of party after action is commenced. If, after complying with the procedural requirements of NRS 40.645 and 40.680, or NRS 40.682, a claimant proceeds with an action for damages arising from a constructional defect:

1. The claimant and each contractor who is named in the original complaint when the action is commenced are not required, while the action is pending, to comply with the requirements of NRS 40.645 or 40.680, or NRS 40.682, for any constructional defect that the claimant includes in an amended complaint, if the constructional defect:

- (a) Is attributable, in whole or in part, to such a contractor;
- (b) Is located on the same property described in the original complaint; and
- (c) Was not discovered before the action was commenced provided that a good faith effort had been undertaken by the claimant.

2. The claimant is not required to give written notice of a defect pursuant to subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682 to any person who is joined to or intervenes in the action as a party after it is commenced. If such a person becomes a party to the action:

- (a) For the purposes of subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682, the person shall be deemed to have been given notice of the defect by the claimant on the date on which the person becomes a party to the action; and

- (b) The provisions of NRS 40.600 to 40.695, inclusive, apply to the person after that date.

(Added to NRS by 1999, 1438)