

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

Suggested Amendment to Senate Bill 241 as agreed in principle by the Coalition for Fairness in Construction and the Nevada Trial Lawyers Association.

Amend Chapter 40 as opposed to creating a new chapter on construction defect legislation that would accomplish the following:

- A. Establishes a mandatory pre litigation opportunity to repair for contractors and subcontractors.
- B. Preserves the right of an unsatisfied or ignored homeowner to access the legal system.
- C. Removes the procedural distinction between complex and non complex cases.
- D. Provides for a repair in 105 days for 4 homes or less cases and 150 days for 5 or more homes.
- E. Refines and clarifies the definition of defect.
- F. Allows access to the contractors board for advice for those who choose to use that board but without making it mandatory.
- G. Preserves the court's discretion to determine class actions in construction defect cases
- H. Clarifies that offers of judgement are acceptable in construction defect cases if they include all of the damages recoverable by the claimant under NRS 40.655.
- I. Clarifies that a homeowner who has been sued by a builder for any reason, including defamation, is not required to provide notice to a contractor in order to commence an action.
- J. Provides that contractors and subcontractors maintain their right to repair after the commencement of litigation as long as the new defect is separate and unrelated from the initial defect. This notice doesn't abate or slow down the underlying case.
- K. Pre litigation mediation is maintained and refined.

1 of 20

ASSEMBLY JUDICIARY

DATE: 5/16/13 ROOM: 3138 EXHIBIT H

SUBMITTED BY: Bob Crowell

40.600. Definitions

As used in NRS 40.600 to 40.695, inclusive, unless the context otherwise requires, the words and terms defined in NRS 40.605 to 40.630, inclusive, have the meanings ascribed to them in those sections.

"Amend a complaint to add a cause of action for a constructional defect" defined. "Amend a complaint to add a cause of action for a constructional defect" means any act by which a claimant seeks to: (1) add to the pleadings a constructional defect that is not otherwise included in the pleadings; or (2) Amend the pleadings in such a manner that the practical effect is the addition of a constructional defect that is not otherwise included in the pleadings.

40.605. "Appurtenance" defined

1. "Appurtenance" means a structure, installation, facility, amenity or other improvement that is appurtenant to or benefits one or more residences, but is not a part of the dwelling unit. The term includes, without limitation, the parcel of real property, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping, common elements and limited common elements other than those described in NRS 116.2102, and other structures, installations, facilities and amenities associated with or benefiting one or more residences.

2. As used in this section:

(a) "Common elements" has the meaning ascribed to it in NRS 116.110318.

(b) "Limited common element" has the meaning ascribed to it in NRS 116.110355

40.610. "Claimant" defined

"Claimant" means an owner of a residence or appurtenance or a representative of a homeowner's association that is responsible for a residence or appurtenance and is acting within the scope of his duties pursuant to chapter 116 or 117 of NRS.

40.615. "Constructional defect" defined

"Constructional defect" includes a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance. The term includes a violation of applicable law, including applicable code requirements, 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, a violation of the standard of care, or a condition that presents an unreasonable risk of bodily injury or property damage. **(Intended to be disjunctive—to be fixed by bill drafting)**

40.620. "Contractor" defined

"Contractor" means a person, ~~including, without limitation, a master developer or subdivider,~~ who, with or without a license issued pursuant to chapter 624 of NRS, by himself or through his agents, employees or subcontractors:

1. Develops, constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof;
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, constructed, altered, repaired, improved or landscaped. (Should be existing law)

"Design professional" defined

"Design professional" means a person who holds a professional license or certificate issued pursuant to chapters 623, 623A or 625 of NRS.

40.625. "Homeowner's warranty" defined

"Homeowner's warranty" means a warranty or policy of insurance:

1. Issued or purchased by or on behalf of a contractor for the protection of a claimant; or
2. Purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive.

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 contractor for the cost to repair a constructional defect in a residence.

"Master developer" defined

"Master developer" means a person who buys, sells, or develops a planned unit development, including without limitation, a person who enters into a development agreement pursuant to NRS 278.0201.

"Planned unit development" defined

"Planned unit development" has the meaning ascribed to it in NRS 278A.065.

40.630. "Residence" defined

"Residence" means any dwelling in which title to the individual unit is transferred to the owners.

"Subcontractor" defined

"Subcontractor" means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.

"Subdivider" defined

"Subdivider" has the meaning ascribed to it in NRS 278.0185.

"Supplier" defined

"Supplier" means a person who provides materials, equipment or other supplies for the construction of a residence or appurtenance.

40.635. Applicability; effect on other defenses

NRS 40.600 to 40.695, inclusive:

1. Apply to any claim 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 an action commenced on or after July 1, 1995.
2. Prevail over any conflicting law otherwise applicable to the claim or cause of action.
3. Do not bar or limit any defense otherwise available except as otherwise provided in those sections.

4. *Except as provided in this Chapter, do not create a new theory upon which liability may be based.*

40.640. Liability of contractor

In a claim to recover damages resulting from a constructional defect, a contractor is liable for his acts or omissions or the acts or omissions of his agents, employees or subcontractors and is not liable for any damages caused by:

1. The acts or omissions of a person other than the contractor or his agent, employee or subcontractor;
2. The failure of a person other than the contractor or his agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;
3. Normal wear, tear or deterioration;
4. Normal shrinkage, swelling, expansion or settlement; or
5. Any constructional defect 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.

***Written notice to contractor required before claimant commences cause of action for constructional defect; contents of notice; pursuit of claim under warranty
(Bill drafter should fix 40.645 to accomodate mandatory right of repair)***

Except as otherwise provided in this chapter, before a claimant may bring an action for constructional defect or amend a complaint to add a cause of action for constructional defect against a contractor, subcontractor, supplier or design professional under NRS 40.600, et seq., the claimant must first provide the contractor with written notice of each constructional defect that forms the basis of the action and comply with the provisions of this Chapter. Except as provided in subsection 4, failure to follow the requirements of this Chapter shall result in a dismissal of the claim without prejudice.

Prior to and as a condition to asserting a claim or amending a complaint to include a cause of action for constructional defect against a contractor, a subcontractor, supplier and/or design professional under NRS 40.600, et seq., each claimant shall provide the contractor notice of each constructional defect that forms the basis of the claim, and allow an opportunity for the contractor or any responsible subcontractor, supplier and/or design professional to repair said defects as set forth in this Chapter. The notice referenced herein shall be sent to the contractor, by registered mail, return receipt, at the contractor's last known address and/or the address listed for the contractor from the records of the state contractor's board and/or county or city clerk's office that issues business licenses. The notice indicate that it has been sent pursuant to this Chapter and shall specify 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.

If, before a claimant provides written notice to the contractor pursuant to this section, the claimant knows that that the contractor is no longer in business as a contractor, the claimant shall provide written notice to each subcontractor, supplier and/or design professional who may be liable for the constructional defect and whose identity is known by the claimant.

If a claimant fails to give proper notice pursuant to this section, the Court shall dismiss the claim without prejudice and compel the claimant to follow the notice provisions set forth herein. However, in the event a dismissal without prejudice would result in a claimant's inability to satisfy the notice requirements of this section within the time remaining under the applicable statute of limitations or statute of repose, the Court shall stay all proceedings pending claimant's compliance with this section.

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.

A homeowner association may send notice of a claim against a contractor or a subcontractor, supplier or design professional under NRS 40.600, et seq. If the claimant is a representative of a homeowner's association or a homeowner's association, the association shall send any response made by the contractor to each member of the association within 10 days of the receipt thereof. (this section should go back to existing law by the bill drafter)

An expert opinion concerning the cause of the defects and the nature and extent of the damage or injury resulting from the defects including an expert opinion based on a representative sample of the components of the residences and appurtenances involved in the notice satisfies the requirements of this section.

Exceptions to the notice requirement

A claimant is not required to provide a contractor with notice pursuant to this chapter before commencing a cause of action for constructional defect if:

The contractor has a lawsuit pending against the claimant regarding the residence; or
2. The claimant has filed a formal complaint with the police because the contractor has threatened to commit or committed an act of violence or criminal offense against the claimant or the property of the claimant. (Bill drafter to use the appropriate wording such as law enforcement)

Special written notice requirement for constructional defect common to residences in a community where the notice alleges a defect common to homes in addition to those belonging to the named plaintiffs.

1. Where a contractor receives notice from a claimant or claimants pursuant to this chapter which alleges a defect common to homes in addition to those belonging to the named plaintiffs, after reasonable investigation or inspection of the subject matter of the notice, verifies the existence of a potential constructional defect that may exist in other residences or appurtenances within the claimant's immediate development withing the homes tested. the contractor may provide each owner of a residence or appurtenance the contractor believes contains the potential constructional defect with a notice as prescribed in this section. The notice of potential constructional defect shall, at a minimum, specify:

(a) The nature of the potential defect, and

(b) A description of how and where to respond to the notice.

2. The contractor shall send the notice prescribed in this section to the claimant or claimants by registered mail, return receipt, to the claimant's home address. Notice is 30 days for the routine response and 10 days where the notice provides notice of an imminent threat.

3. A claimant or claimants shall not be allowed to commence any action for constructional defect against a contractor who sends notice under this section, or a subcontractor, supplier or design professional that may be responsible for the potential constructional defect until such time as the claimant or claimants have satisfied the requirements of this Chapter. **(Bill drafting note: the idea is: When the homeowner has been told of the problem, the contractor is afforded a right to repair.)**

4. Sending a notice of potential constructional defect as prescribed herein shall not toll any statute of limitations or statute of repose applicable to an action for any constructional based on the notice described pursuant to this section. **(Note to drafter: Please provide for tolling from date notice is sent until 60 days after repairs are complete.)**

5. **If the contractor does not send the notice referenced in this section, then owners of any or all or all of the homes identified in section 1 may commence an action for construction defect without further notice.**

Written copy of Notice to subcontractors, suppliers and design professionals required within 30 days.

Not later than 30 days after the date that the written notice of a constructional defect is received by the contractor as prescribed in NRS _____, a contractor shall provide a copy of such notice, by registered mail, return receipt to the last known address, to each subcontractor, supplier and/or design professional who may be liable for the constructional defect.

Failure to give notice to subcontractors, suppliers and design professionals

1. Except as otherwise provided in subsection 2, a claimant or contractor may not pursue any claim related to the constructional defect against a subcontractor, supplier or design professional who is liable for the constructional defect, unless the claimant or contractor has provided the subcontractor, supplier or design professional with the notice prescribed in NRS _____ or a copy of the written notice as required by this Chapter; and a reasonable opportunity to repair the constructional defect.

2. A claimant or contractor shall be entitled to assert a claim against a subcontractor, supplier and/or design professional who has not been given notice and an opportunity to repair under this Section provided the claimant or contractor can demonstrate that after exercising a good-faith effort, said claimant or contractor could not identify during the time frames set forth herein the subcontractor, supplier and/or design professional who may have been responsible for the constructional defect set forth in the notice prescribed in NRS _____ above.

Inspection; Access to residence upon reasonable notice

After the claimant sends written notice of a constructional defect referenced in NRS _____, the claimant, upon reasonable notice, shall provide the contractor and each subcontractor, supplier or design professional who may be liable for the constructional defect with reasonable 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 any repairs that may be necessary. The parties entitled to inspection shall, to the extent possible, coordinate their efforts and schedule their inspections so as to not unduly burden the claimant.

Decision to repair after inspection; written notice to contractor and claimant;

Not later than 15 days after the date of an inspection by a subcontractor, supplier or design professional of the constructional defect, which inspection shall take place within 30 days of receiving notice from the contractor, the subcontractor, supplier or design professional shall provide the contractor with a written statement indicating whether the subcontractor, supplier or design professional has elected to repair the constructional defect; and if such election is made, 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.

2. Not later than 90 days after the date that written notice is sent to the contractor pursuant to NRS _____ or, if written notice is sent to a subcontractor, supplier or design professional, the contractor, subcontractor, supplier or design professional, as appropriate, shall provide the claimant with a written statement indicating whether the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect. If the proposed repairs require the claimant or occupant in a community association to relocate, the contractor, subcontractor, supplier or design professional making the repair shall so advise and shall pre-pay to claimant, or occupant in a community association, reasonable sums necessary for temporary housing or furniture relocation.

3. **If no repairs are to be made to a constructional defect, the contractor may provide a claimant with a proposal for monetary contribution which may include subcontractor, supplier and/or design professional contributions or shall disclaim liability for a constructional defect and the state reasons therefor.**

Decision to repair; effect on cause of action for constructional defect.

(Bill drafter: check language)

As to defects that will not be the subject of repair, the claimant may proceed with a claim pursuant to NRS Chapter 40.600, et. seq

As to those defects that will be repaired, a claimant may not proceed with a claim pursuant to NRS 40.600, et. seq. until all provisions of this section have been satisfied.

Failure to undertake repairs, failure to accomplish repairs in a good and workmanlike manner; effect on action for constructional defect.

Should a subcontractor, supplier and/or design professional fail to undertake repairs to a claimant's residence or appurtenance pursuant to this Chapter or should said subcontractor, supplier and/or design professional fail to accomplish repairs in accordance with applicable law, applicable local building code or industry standard **and good and workmanlike manner (This good and workman manner should be inserted and made consistent throughout this draft and consistent with the definition of defect)**, then the claimant or the contractor shall be entitled to institute an action for damages relating to a constructional defect against the subcontractor, supplier and/or design professional.

Repairs; nature and extent of repairs; completion within 150 days of notice.

1. If the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the contractor, subcontractor, supplier or design professional must: 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;

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

Complete the repairs or have the repairs completed with a reasonable period as required by the provision of this section;

Provide the claimant, not later than 30 days after the repairs are completed, 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;

Perform all work, or have all work performed in accordance with applicable local building codes, or where no building code applies, in accordance with industry standards;

Refrain from performing any repairs which would increase the cost of maintenance or upkeep of the residence beyond that which would have been required had the residence been properly constructed, unless the contractor and claimant agree in writing that contractor will compensate the claimant for increased costs; and

Remove and replace any non-defective components of the residence to the extent such removal and replacement is necessary to correct any defects.

Prevent, remove and indemnify the claimant against any mechanic liens on property for the repairs performed.

(105 days for 4 or less and 150 days for 5 or more or HOAs.) The repairs contemplated in this section must be complete within 150 days after the contractor receives the notice referenced in NRS _____, unless completion is delayed by the claimant or by other events beyond the control of the contractor, subcontractor, supplier and/or design professional or timely completion of the repairs is not reasonably possible. The claimant and the contractor may agree in writing to extend the periods prescribed in this Section and, where it is not reasonably possible to complete the repairs within the time periods set forth herein, the parties shall negotiate in good faith so as to set forth a reasonable time frame for accomplishing the repairs. A claimant or a contractor may petition the court to establish reasonable time frames if agreement cannot be reached and the prevailing party shall be entitled to its reasonable attorney's fees and costs in connection with the petition.

Any repairs made pursuant to this section by a contractor, subcontractor, supplier or design professional may not be conditioned upon a release of claims.

Dispute as to the method, adequacy or need for repairs

Where a claimant and the contractor, subcontractor, supplier and/or design professional disagree as to need for repair, or where a claimant disputes the method or adequacy of the repairs performed pursuant to this chapter, a claimant, contractor, subcontractor, supplier and/or design professional, as applicable, may present the dispute to the Nevada State Contractor's Board. If a dispute is submitted to the State Contractor's Board pursuant to this section, the State Contractors' Board shall investigate matters within their jurisdiction and render an opinion thereto concerning: whether there was a need for repair; or whether the method used to perform the repairs was appropriate, and whether the repairs were performed in a good and workmanlike manner and in accordance with applicable law. The Contractor's Board shall render its opinion within 30 days of receiving notice of the dispute. The decision of the State Contractors' Board is not subject to judicial review pursuant to the provisions of chapters 233B and 624 of NRS, and is not admissible in any judicial or administrative proceeding of any kind. Nothing in this section shall operate to stay any proceedings governed

by this Chapter. (Bill Drafter: This process is separate from chapter 624 proceedings and not mandatory. Homeowners not required to participate in hearing or other board proceedings.)

Newly discovered constructional defect(s) after commencement of action

Should a claimant file a cause of action for constructional defect against a contractor, subcontractor, supplier and/or design professional pursuant to NRS 40.600 et. seq, after complying with the notice and right to repair provisions herein, and should during the course of prosecuting the cause of action for constructional defect, constructional defects that were not part of a notice previously provided to the contractor pursuant to this Section become known, said claimant must provide to the contractor the notice referenced in NRS _____ for each newly discovered constructional defect and must provide said contractor with an opportunity to repair as set forth in NRS _____. Unless otherwise agreed to between the claimant and the contractor, subcontractor, supplier and/or design professional, no claims shall be included in the pending claim until the contractor, subcontractor, supplier and/or design professional has been afforded the opportunity to repair pursuant to NRS _____, et seq. (Bill Drafter: Underlying action is not abated or stayed unless agreed to by the claimant—the defect must be different and unrelated to the original defect.)

Presentation of notice to insurer; coverage obligations

Should a contractor, subcontractor, supplier or design professional be presented with a notice pursuant to this Section, a contractor, subcontractor, supplier or design professional shall be entitled to, at its option, present said notice to an insurer who has issued a policy of insurance that covers all or a portion of the operations of a contractor, subcontractor, supplier or design professional and further any notice so provided shall constitute the commencement of a civil proceeding under said policy and shall trigger any coverage obligations under said policy.

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, subcontractor, supplier or design professional a 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, subcontractor, supplier or design professional fails to:

- (a) Comply with the provisions of NRS _____; (*contractor response provision*) or
- (b) Comply with the provisions of NRS _____, (*mediation section*) 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.

40.655. Limitation on recovery

1. Except as otherwise provided in NRS 40.650, in a claim governed by NRS 40.600 to 40.695, inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) Any reasonable attorney's fees;

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

(c) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

(d) The loss of the use of all or any part of the residence;

(e) The reasonable value of any other property damaged by the constructional defect;

(f) Any additional costs reasonably incurred by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:

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

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

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

(g) Any interest provided by statute, ~~except prejudgment interest on any recovery where cost of repair and damages are asserted based on the present value of the asserted damages.~~

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

3. If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, the claimant may not recover from the contractor, as a result of the constructional defect, anything other than that which is provided pursuant to NRS 40.600 to 40.695, inclusive.

4. As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.

5. *Nothing in this Chapter shall be construed to impair or eliminate any contractual rights of a contractor, subcontractor, supplier and/or design professional or operate to bar any agreements between said parties. (Bill drafter limit to contracts between construction professional and not claimants)*

40.665. Settlement by repurchase; certain offers of settlement deemed reasonable

In addition to any other method provided for settling a claim pursuant to NRS 40.600 to 40.695, inclusive, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located.

The agreement may include provisions which reimburse the claimant for:

1. 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;

2. The value of any improvements made to the property by a person other than the contractor;
3. Reasonable attorney's fees and fees for experts; and
4. Any costs, including costs and expenses for moving and costs, points and fees for loans. Any offer of settlement made that includes the items listed in this section shall be deemed reasonable for the purposes of subsection 1 of NRS 40.655.
5. *Nothing in this Chapter shall prevent a contractor, subcontractor, supplier and/or design professional from making a monetary offer of settlement to a claimant in exchange for a release from liability.*

40.668. Action against subdivider or master developer for defect in appurtenance in planned unit development: Conditions and limitations; tolling of statutes of limitation or repose; applicability

1. Notwithstanding the provisions of NRS 40.600 to 40.695, inclusive, a claimant may not commence an action against a subdivider or master developer for a constructional defect in an appurtenance constructed on behalf of the subdivider or master developer in a planned unit development, to the extent that the appurtenance was constructed by or through a licensed general contractor, unless:
 - (a) The subdivider or master developer fails to provide to the claimant the name, address and telephone number of each contractor hired by the subdivider or master developer to construct the appurtenance within 30 days of the receipt by the subdivider or master developer of a request from the claimant for such information; or
 - (b) After the claimant has made a good faith effort to obtain full recovery from the contractors hired by the subdivider or master developer to construct the appurtenance, the claimant has not obtained a full recovery.
2. All statutes of limitation or repose applicable to a claim governed by this section are tolled from the time the claimant notifies a contractor hired by the subdivider or master developer of the claim until the earlier of the date:
 - (a) A court determines that the claimant cannot obtain a full recovery against those contractors; or
 - (b) The claimant receives notice that those contractors are bankrupt, insolvent or dissolved.
 Tolling pursuant to this subsection applies only to the subdivider or master developer. Notwithstanding any applicable statute of limitation or repose, the claimant may commence an action against the subdivider or master developer for the claim within 1 year after the end of the tolling described in this subsection.
3. Nothing in this section prohibits the commencement of an action against a subdivider or master developer for a constructional defect in a residence sold, designed or constructed by or on behalf of the subdivider or master developer.
4. Nothing in this section prohibits a person other than the claimant from commencing an action against a subdivider or master developer to enforce his own rights.
5. The provisions of this section do not apply to a subdivider or master developer who acts as a general contractor or uses his license as a general contractor in the course of constructing the appurtenance that is the subject of the action.

40.670. Defect which creates imminent threat to health or safety: Duty of contractor to cure; effect of failure to cure; exceptions

1. A contractor, *subcontractor, supplier or design professional* who receives written notice of a

constructional defect resulting from work performed by the contractor, *subcontractor, supplier or design professional* or his agent or employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor, *subcontractor, supplier or design professional* shall not cure the defect by making any repairs for which he is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor, *subcontractor, supplier or design professional* fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor, *subcontractor, supplier or design professional* the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.

2. A contractor, *subcontractor, supplier or design professional* who does not cure a defect pursuant to this section because he has determined, in good faith and after a reasonable inspection, that there is not an imminent threat to the health or safety of the inhabitants is not liable for attorney's fees and costs pursuant to this section, except that if a building inspector, building official or other similar authority employed by a governmental body with jurisdiction certifies determines that there is an imminent threat to the health and safety of the inhabitants of the residence, the contractor is subject to the provisions of subsection 1.

40.672. Defect in new residence: Duty of contractor to repair; time limits; extensions; disciplinary action for failure to comply

Except as otherwise provided in NRS 40.670, if a contractor, *subcontractor, supplier or design professional* receives written notice of a constructional defect ~~that is not part of a complex matter~~ not more than 1 year after the close of escrow of the initial purchase of the residence, the contractor, *subcontractor, supplier or design professional* shall make the repairs within 45 days after ~~the contractor receives~~ receiving the written notice unless completion is delayed by the claimant or by other events beyond the control of the contractor, *subcontractor, supplier or design professional* or timely completion of repairs is not reasonably possible. The contractor, *subcontractor, supplier or design professional* and claimant may agree in writing to extend the period prescribed by this section. If the contractor, *subcontractor, supplier or design professional* fails to comply with this section, he is immediately subject to discipline pursuant to NRS 624.300.

Mediation required before action commenced; procedure

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 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 claimant submits the matter to 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 20 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.***

3. *The mediator shall commence the mediation within 30 days of being selected and shall complete the mediation within 45 days of selection, 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, in equal shares, 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.

Effect of failure of mediation

1. *If the claimant and any other party fail to resolve the matter during the mediation or if any other party fails to pay the required fees for the mediation or fails to appear for the mediation:*

(a) *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 against the party; and*

(b) *The prevailing party in the action may recover, as costs of the action, the reasonable costs and fees paid by the party for the mediation.*

~~NRS 40.682. Complex matters: Written notice by claimant; procedural requirements; additional parties and third-party complaints; mediation; appointment of special master; limitation on certain pretrial procedures; pursuit of claim under warranty; written response by contractor Except as otherwise provided in this section and NRS 40.670:~~

~~1. Notwithstanding the provisions of subsection 1 of NRS 40.680, a claimant may commence an action in district court in a complex matter. If the claimant commences an action in district court he shall:~~

~~(a) File and serve the summons and complaint as required by law; and~~

~~(b) At the same time and in the same manner as the claimant serves the summons and complaint upon the contractor, serve upon the contractor a written notice specifying in reasonable detail, to the extent known, the defects and any damages or injuries to each residence or appurtenance that is the subject of the claim. The notice must describe in reasonable detail each defect, the specific location of each defect, and the nature and extent that is known of the damage or injury resulting from each defect. If an expert opinion has been rendered concerning the existence or extent of the defects, a written copy of the opinion must accompany the notice. An expert opinion that specifies each defect to the extent known, the specific location of each defect to the extent~~

~~known, and the nature and extent that is known of the damage or injury resulting from each defect, based on a valid and reliable representative sample of the residences and appurtenances involved in the action, satisfies the requirements of this section.~~

2. The contractor shall file and serve an answer to the complaint as required by law.

3. Not later than 30 days after the date of service of the answer to the complaint, the contractor and claimant shall meet to establish a schedule for:

(a) The exchange of or reasonable access for the other party to 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;

(b) The inspection of the residence or appurtenance that is the subject of the claim to evaluate the defects set forth in the notice served pursuant to subsection 1; and

(c) The conduct of any tests that are reasonably necessary to determine the nature and cause of a defect or any damage or injury, and the nature and extent of repairs necessary to remedy a defect or any damage or injury. The party conducting the test shall provide reasonable notice of the test to all other parties and conduct the test at a reasonable time.

4. At the meeting held pursuant to subsection 3, the claimant and contractor shall:

(a) Establish a schedule for the addition of any additional parties to the complaint or to file any third-party complaint against an additional party who may be responsible for all or a portion of the defects set forth in the notice served pursuant to subsection 1;

(b) Unless the claimant and contractor agree otherwise in writing, select a mediator and proceed with mediation as provided in subsections 2 to 6, inclusive, of NRS 40.680; and

(c) If the claimant and contractor agree, select a special master and jointly petition the court for his appointment pursuant to subsection 7.

5. Each party added to the complaint or against whom a third-party complaint is filed pursuant to subsection 4 shall file and serve an answer as required by law.

6. If the claimant or contractor adds a party to the complaint or files a third-party complaint, then not later than 60 days after the date determined pursuant to paragraph (a) of subsection 4, the contractor, claimant and each party added to the complaint or against whom a third-party complaint is filed shall meet to establish a schedule for the activities set forth in paragraphs (a), (b) and (c) of subsection 3.

7. If a special master has not been appointed, the contractor, claimant or a party added to the complaint or against whom a third-party complaint is filed may petition the court for the appointment of a special master at any time after the meeting held pursuant to subsection 3. The special master may:

(a) Take any action set forth in subsection 4 of NRS 40.680;

(b) Exercise any power set forth in Rule 53 of the Nevada Rules of Civil Procedure; and

(c) Subject to the provisions of NRS 40.680, if the parties fail to establish a schedule or determine a date as required in subsection 3, 4 or 6, establish the schedule or determine the date.

8. Unless the mediation required pursuant to paragraph (b) of subsection 4 is completed or the contractor and claimant have agreed in writing not to mediate the claim pursuant to paragraph (b) of subsection 4, a party shall not propound interrogatories or requests for admission, take a deposition or file a motion that is dispositive of the action except:

(a) Upon agreement of the parties; or

(b) With the prior approval of the court or special master.

9. 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.

10. Unless the parties agree otherwise, not less than 60 days before the date of the mediation pursuant to paragraph (b) of subsection 4 is convened, the contractor shall make a written response to the claimant that meets the requirements set forth in subsection 3 of NRS 40.645.

11. 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 in writing not more than 30 days after the date the claimant receives the response.

12. The claimant shall respond to the written response of the contractor within 45 days after the response of the contractor is mailed to the claimant.

Settlement conference; participation of insurer

1. If a settlement conference is held concerning a claim for a constructional defect, the special master, if any, or the judge presiding over the claim may order a representative of an insurer of a party to attend the settlement conference. If a representative of an insurer is ordered to attend the settlement conference, the insurer shall ensure that the representative is authorized, on behalf of the insurer, to:

(a) Bind the insurer to any settlement agreement relating to the claim;

(b) Enter into any agreement relating to coverage under the party's policy of insurance that is required to carry out any settlement relating to the claim; and

(c) Commit for expenditure any money or other assets available under the party's policy of insurance.

2. If a representative of an insurer who is ordered to attend a settlement conference pursuant to subsection 1 fails to attend the settlement conference or attends but is substantially unprepared to participate, or fails to participate in good faith, the special master or the judge may, on his own motion or that of a party, issue any order with regard thereto that is just under the circumstances.

3. In lieu of or in addition to any other sanction, the special master or the judge may require the insurer to pay any reasonable expenses or attorney's fees incurred by a party because of the failure of the insurer or its representative to comply with the provisions of this section or any order issued pursuant to this section, unless the special master or the judge finds that the failure to comply was substantially justified or that any other circumstances make the award of such expenses or fees unjust.

40.685. Replaced in revision by NRS 40.667

40.687. Disclosure of information concerning warranties after action is commenced; disclosure of information concerning insurance agreements; compelled production of information
Notwithstanding any other provision of law:

1. A claimant shall, within 10 days after commencing an action against a contractor, disclose to the contractor all information about any homeowner's warranty that is applicable to the claim.

2. The contractor shall, no later than 10 days after a response is made pursuant to this chapter, disclose to the claimant 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 either party fails to provide the information required pursuant to subsection 1 or 2 within the time allowed, the other party 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. For the purposes of this section, "information about insurance agreements" is limited to any declaration sheets, endorsements and contracts of insurance issued to the contractor from the commencement of construction of the residence of the claimant to the date on which the request for the information is made and does not include information concerning any disputes between the contractor and an insurer or information concerning any reservation of rights by an insurer.

40.688. Disclosure of defects by claimant to prospective purchaser of residence required; timing and contents of disclosure; duty of attorney to inform claimant of disclosure requirement

1. If a claimant attempts to sell a residence that is or has been the subject of a claim governed by NRS 40.600 to 40.695, inclusive, he shall disclose, in writing, to any prospective purchaser of the residence, not less than 30 days before the close of escrow for the sale of the residence or, if escrow is to close less than 30 days after the execution of the sales agreement, then immediately upon the execution of the sales agreement or, if a claim is initiated less than 30 days before the close of escrow, within 24 hours after giving written notice to the contractor pursuant to NRS _____, ~~subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682:~~

(a) All notices given by the claimant to the contractor pursuant to NRS 40.600 to 40.695, inclusive, that are related to the residence;

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

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

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

2. Before taking any action on a claim pursuant to NRS 40.600 to 40.695, inclusive, the attorney for a claimant shall notify the claimant in writing of the provisions of this section.

40.6881. Definitions

As used in NRS 40.6881 to 40.6885, inclusive, unless the context otherwise requires, the words and terms defined in NRS 40.6882 and 40.6883 have the meanings ascribed to them in those sections.

40.6882. "Complainant" defined

"Complainant" means a person who makes a claim or files an action against a design professional pursuant to NRS 40.600 to 40.695, inclusive.

40.6883. "Design professional" defined

"Design professional" means a person who holds a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.

40.6884. Attorney required to consult expert; required affidavit of attorney; required report of expert

1. Except as otherwise provided in subsection 2, in an action governed by NRS 40.600 to 40.695, inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, the attorney for the complainant shall file an affidavit with the court concurrently with the service of the first pleading in the action stating that the attorney:
 - (a) Has reviewed the facts of the case;
 - (b) Has consulted with an expert;
 - (c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and
 - (d) Has concluded on the basis of his review and the consultation with the expert that the action has a reasonable basis in law and fact.
2. The attorney for the complainant may file the affidavit required pursuant to subsection 1 at a later time if he could not consult with an expert and prepare the affidavit before filing the action without causing the action to be impaired or barred by the statute of limitations or repose, or other limitations prescribed by law. If the attorney must submit the affidavit late, he shall file an affidavit concurrently with the service of the first pleading in the action stating his reason for failing to comply with subsection 1 and the attorney shall consult with an expert and file the affidavit required pursuant to subsection 1 not later than 45 days after filing the action.
3. In addition to the statement included in the affidavit pursuant to subsection 1, a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the report must be prepared by the expert consulted by the attorney and include, without limitation:
 - (a) The resume of the expert;
 - (b) A statement that the expert is experienced in each discipline which is the subject of the report;
 - (c) A copy of each nonprivileged document reviewed by the expert in preparing his report, including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;
 - (d) The conclusions of the expert and the basis for the conclusions; and
 - (e) A statement that the expert has concluded that there is a reasonable basis for filing the action.
4. In an action brought by a claimant in which an affidavit is required to be filed pursuant to subsection 1:
 - (a) The report required pursuant to subsection 3 is not required to include the information set forth in paragraphs (c) and (d) of subsection 3 if the claimant or his attorney files an affidavit, at the time that the affidavit is filed pursuant to subsection 1, stating that he made reasonable efforts to obtain the nonprivileged documents described in paragraph (c) of subsection 3, but was unable to obtain such documents before filing the action;
 - (b) The claimant or his attorney shall amend the report required pursuant to subsection 3 to include any documents and information required pursuant to paragraph (c) or (d) of subsection 3 as soon as reasonably practicable after receiving the document or information; and
 - (c) The court may dismiss the action if the claimant and his attorney fail to comply with the requirements of paragraph (b).
5. An expert consulted by an attorney to prepare an affidavit pursuant to this section must not be a party to the action.

6. As used in this section, "expert" means a person who is licensed in a state to engage in the practice of professional engineering, land surveying, architecture or landscape architecture.

40.6885. Effect of compliance with or failure to comply with NRS 40.6884

1. The court shall dismiss an action governed by NRS 40.600 to 40.695, inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, if the attorney for the complainant fails to:
 - (a) File an affidavit required pursuant to NRS 40.6884;
 - (b) File a report required pursuant to subsection 3 of NRS 40.6884; or
 - (c) Name the expert consulted in the affidavit required pursuant to subsection 1 of NRS 40.6884.
2. The fact that an attorney for a complainant has complied or failed to comply with the provisions of NRS 40.6884 is admissible in the action.

40.689. Preference given to action; action may be assigned to senior judge; assessment of additional expenses

1. Upon petition by a party:
 - (a) The court shall give preference in setting a date for the trial of an action commenced pursuant to NRS 40.600 to 40.695, inclusive; and
 - (b) The court may assign an action commenced pursuant to NRS 40.600 to 40.695, inclusive, to a senior judge.
2. If the action is assigned to a senior judge upon petition by a party:
 - (a) Any additional expenses caused by the assignment must be borne equally by each party involved; or
 - (b) The judge may distribute any additional expenses among the parties as he deems appropriate.

40.690. Limitation on bringing claim against governmental entity during period for resolution; effect of settlement; contractor or claimant may require party to appear and participate

1. A claim governed by NRS 40.600 to 40.695, inclusive, may not be brought by a claimant or contractor against a government, governmental agency or political subdivision of a government, during the period in which a claim for a constructional defect is being settled, mediated or otherwise resolved pursuant to NRS 40.600 to 40.695, inclusive. The settlement of such a claim does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.
2. A contractor or claimant may require a party against whom the contractor or claimant asserts a claim governed by NRS 40.600 to 40.695, inclusive, to appear and participate in proceedings held pursuant to those sections as if the party were a contractor and the party requiring him to appear were a claimant. The party must receive notice of the proceedings from the contractor or claimant.

40.695. Tolling of statutes of limitations or repose; applicability

1. Except as otherwise provided in subsection 2, statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, are tolled

from the time notice of the claim is given, until 30 days after mediation is concluded or waived in writing pursuant to NRS 40.680 or subsection 4 of NRS 40.682.

2. Tolling under this section applies:

(a) Only to a claim that is not a complex matter.

(b) To a third party regardless of whether the party is required to appear in the proceeding.

Voting Requirements for Homeowners' Associations

NRS 116.3115 is hereby amended to read as follows: _____

~~a. No homeowners association shall be entitled to bring an action pursuant to this Chapter unless said association shall have provided the required notice of claim under NRS _____, and obtained from the members of the association holding at least 51 percent of the voting rights of the association the approval of the members to file an action pursuant to this Section.~~

~~b. In any claim brought by an association pursuant to this Chapter, the association or the attorney representing the association shall certify in writing that said approval has been obtained.~~

~~(Bill drafter-section deleted)~~