

SENATE BILL NO. 371—SENATOR SCHNEIDER

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Creates Constructional Defect Commission and revises various provisions governing actions resulting from constructional defects. (BDR 54-251)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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

AN ACT relating to real property; creating the Constructional Defect Commission; providing for its membership; setting forth the duties of the Commission; conferring exclusive jurisdiction upon the Commission to determine claims or causes of action for constructional defects; providing exceptions; requiring a claimant to provide certain notices and to allow a contractor a reasonable opportunity to repair a constructional defect before presenting a claim involving the constructional defect to the Commission; setting forth the manner in which a complaint must be presented to the Commission; requiring the Commission to hear a claim of a constructional defect within a certain period; authorizing the Commission to require a contractor to repair a constructional defect under certain circumstances; prohibiting the exclusion of a public officer from a meeting of a unit-owners' association under certain circumstances; and providing other matters properly relating thereto.

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



1 **Section 1.** Chapter 624 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 19, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 19, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3, 4 and 5 of this act have the meanings ascribed to*
7 *them in those sections.*

8 **Sec. 3.** *“Commission” means the Constructional Defect*
9 *Commission created pursuant to section 6 of this act.*

10 **Sec. 4.** *“Construction record” means a document received or*
11 *produced by a contractor, or any person employed by the*
12 *contractor, that contains information relating to the construction*
13 *of a residence or appurtenance, including, without limitation, any*
14 *report, record, plan, permit, contract, subcontract, invoice, work*
15 *order or other document.*

16 **Sec. 5.** *“Constructional defect” includes a defect in the*
17 *design, construction, manufacture, repair or landscaping of a new*
18 *residence, of an alteration of or addition to an existing residence,*
19 *or of an appurtenance. The term includes physical damage to the*
20 *residence, an appurtenance or the real property to which the*
21 *residence or appurtenance is affixed that is proximately caused by*
22 *a constructional defect.*

23 **Sec. 6. 1.** *The Board shall create the Constructional Defect*
24 *Commission consisting of seven members appointed by the*
25 *Governor.*

26 **2.** *Each member who is appointed to the Commission serves*
27 *for a term of 4 years. A member may be reappointed to the*
28 *Commission.*

29 **3.** *The Governor shall appoint to the Commission:*

30 **(a)** *Three members who are contractors recommended by the*
31 *Board, each of whom:*

32 **(1)** *Holds a license issued pursuant to this chapter;*

33 **(2)** *Is actively engaged in the contracting business and has*
34 *been so engaged for not less than 5 years preceding the date of his*
35 *appointment; and*

36 **(3)** *Has been a resident of this state for at least 5 years*
37 *immediately preceding his appointment; and*

38 **(b)** *Four members who are representatives of the general*
39 *public.*

40 **4.** *The Governor shall appoint a Chairman of the*
41 *Commission.*

42 **Sec. 7. 1.** *The members of the Commission:*

43 **(a)** *Serve without compensation; and*

44 **(b)** *Upon written request to the Board, are entitled to receive*
45 *the per diem allowance and travel expenses provided for state*



1 *officers and employees generally while engaged in the business of*
2 *the Commission. A claim submitted pursuant to this paragraph*
3 *must be paid from the account established by NRS 624.470.*

4 2. *The Governor may remove a member of the Commission*
5 *before the expiration of his term for misconduct in office,*
6 *incompetence or neglect of duty.*

7 3. *If a vacancy occurs in the membership of the Commission,*
8 *the Governor shall appoint a person to fill the vacancy for the*
9 *remainder of the unexpired term. A vacancy on the Commission*
10 *must be filled in the same manner as the original appointment.*

11 4. *Four members, at least one of whom must be a contractor,*
12 *constitute a quorum.*

13 5. *Notwithstanding any other provision of law, a member of*
14 *the Commission:*

15 (a) *Is not disqualified from public employment or holding a*
16 *public office because of his membership on the Commission; and*

17 (b) *Does not forfeit his public office or public employment*
18 *because of his membership on the Commission.*

19 **Sec. 8. 1.** *The Board shall arrange for courses of*
20 *instruction in the rules of procedure and substantive law*
21 *appropriate for members of the Commission.*

22 2. *Each person appointed to serve on the Commission shall*
23 *attend the instruction provided pursuant to subsection 1 before*
24 *-serving on the Commission.*

25 **Sec. 9. 1.** *Except as otherwise provided in sections 2 to 19,*
26 *inclusive, of this act, the Commission has exclusive jurisdiction to*
27 *determine claims or causes of action for the recovery of damages*
28 *based on constructional defects, and no person may bring or*
29 *maintain such a claim or cause of action in a manner other than*
30 *that prescribed in sections 2 to 19, inclusive, of this act.*

31 2. *A final decision of the Commission concerning a claim or*
32 *cause of action specified in subsection 1 is subject to judicial*
33 *review in accordance with chapter 233B of NRS.*

34 3. *The provisions of chapter 241 of NRS do not apply to any*
35 *meeting or hearing of the Commission held to carry out the*
36 *provisions of sections 2 to 19, inclusive, of this act or to the*
37 *deliberations of the Commission on any information or evidence*
38 *pursuant to sections 2 to 19, inclusive, of this act.*

39 **Sec. 10.** *The Commission and its members acting pursuant to*
40 *sections 2 to 19, inclusive, of this act are immune from any civil*
41 *liability for any decision or action taken in good faith and without*
42 *malicious intent in response to a complaint filed with the*
43 *Commission.*

44 **Sec. 11. 1.** *The Board:*



- 1 (a) *Shall develop and maintain a list of alternate members who*
- 2 *satisfy the requirements of sections 6 and 8 of this act;*
- 3 (b) *Shall schedule the hearings for the Commission;*
- 4 (c) *Shall obtain, before or after the filing of a complaint with*
- 5 *the Commission, such construction records and other materials as*
- 6 *may be required by the parties or the Commission in connection*
- 7 *with the claim of a constructional defect;*
- 8 (d) *Shall charge and collect a reasonable fee for copying*
- 9 *materials produced under subpoena;*
- 10 (e) *For good cause shown, may authorize a continuance for*
- 11 *the proceedings involving the Commission;*
- 12 (f) *To the extent necessary for the Commission to carry out its*
- 13 *duties, shall provide the Commission with administrative support,*
- 14 *equipment and office space; and*
- 15 (g) *May adopt such rules of practice and procedure as are*
- 16 *necessary to carry out the provisions of sections 2 to 19, inclusive,*
- 17 *of this act.*
- 18 2. *The Attorney General shall serve as legal counsel for the*
- 19 *Commission.*
- 20 **Sec. 12. 1.** *A member of the Commission may disqualify*
- 21 *himself from acting in any matter upon the ground of actual or*
- 22 *implied bias.*
- 23 2. *A party to a matter who seeks to disqualify a member of the*
- 24 *Commission from acting on a complaint of a constructional defect*
- 25 *filed pursuant to section 15 of this act shall file a request for*
- 26 *disqualification in writing with the Board not later than 15 days*
- 27 *after the expiration of the time in which to answer the complaint,*
- 28 *specifying the facts upon which such disqualification is sought. A*
- 29 *party may make a request for the disqualification of any member*
- 30 *of the Commission for cause on any of the grounds provided*
- 31 *pursuant to NRS 16.050 for the challenge of jurors.*
- 32 3. *The Board shall determine whether cause exists to*
- 33 *disqualify a member of the Commission pursuant to a request filed*
- 34 *by a party and shall notify each party in writing of its decision not*
- 35 *later than 15 days after the request is made.*
- 36 4. *Except as otherwise provided in subsection 5, the*
- 37 *Commission, less any member who has been disqualified, may*
- 38 *proceed to review a complaint without designating a person to sit*
- 39 *in the place of a disqualified member.*
- 40 5. *If the number of members who are disqualified or whose*
- 41 *temporary absence prohibits a quorum of the Commission from*
- 42 *forming, the Board shall, upon the disqualification or temporary*
- 43 *absence of a member of the Commission, designate an alternate*
- 44 *member from the list developed pursuant to section 11 of this act*
- 45 *who is the same class of member as the disqualified or absent*



1 *member to sit in the place of the disqualified or absent member. If*
2 *an alternate member is designated, that member must be identified*
3 *in the notice provided to the parties pursuant to subsection 3.*

4 **Sec. 13. 1.** *Except as otherwise provided in this section, no*
5 *claim involving a constructional defect may be presented to the*
6 *Commission until the claimant provides:*

7 (a) *Two written notices by certified mail, return receipt*
8 *requested, to the contractor, at the contractor's last known*
9 *address, of the constructional defect alleged in the complaint*
10 *against the contractor; and*

11 (b) *A reasonable opportunity, following the written notices, for*
12 *the contractor to repair the alleged constructional defect.*

13 2. *The written notices required pursuant to subsection 1*
14 *must:*

15 (a) *Be mailed at least 30 days apart;*

16 (b) *Specify, in reasonable detail, the defect or any damage or*
17 *injury to each residence or appurtenance that is the subject of the*
18 *claim;*

19 (c) *Describe in reasonable detail the cause of the defect, if the*
20 *cause is known, and the nature and extent that is known of the*
21 *damage or injury resulting from the defect; and*

22 (d) *Provide the location of each defect within each residence*
23 *or appurtenance to the extent known.*

24 3. *Within 45 days after the contractor receives the first notice,*
25 *on his written request, the contractor is entitled to inspect the*
26 *property that is the subject of the claim to determine the nature*
27 *and cause of the defect, damage or injury and the nature and*
28 *extent of repairs necessary to remedy the defect. The contractor*
29 *shall, before conducting the inspection, provide reasonable notice*
30 *of the inspection, and shall conduct the inspection at a reasonable*
31 *time. The contractor may take reasonable steps to establish the*
32 *existence of the defect, damage or injury.*

33 4. *Within 15 days after a contractor receives the second*
34 *notice, a claimant may present a claim to the Commission as set*
35 *forth in section 15 of this act if the contractor fails to:*

36 (a) *Make an agreement that is acceptable to the claimant to*
37 *make repairs, if the contractor is licensed to make the repairs, or*
38 *cause the repairs to be made, at the contractor's expense, by*
39 *another contractor who is bonded, insured and licensed to make*
40 *the repairs; or*

41 (b) *Make the repairs specified in an agreement between the*
42 *claimant and contractor pursuant to paragraph (a):*

43 (1) *Within the time specified in the agreement; and*

44 (2) *In a good and workmanlike manner.*



1 5. *A written waiver or settlement agreement executed by a*
2 *claimant after a contractor has corrected or otherwise repaired a*
3 *constructional defect pursuant to this section does not bar a claim*
4 *for the constructional defect if it is determined that the contractor*
5 *failed to correct or repair the defect properly.*

6 **Sec. 14.** *A contractor or his representative must be present at*
7 *any inspection at the residence or appurtenance, if any, that is the*
8 *subject of a claim governed by sections 2 to 19, inclusive, of this*
9 *act, which is conducted by the claimant or his representative,*
10 *including, without limitation, an expert hired or retained by the*
11 *claimant to conduct the inspection.*

12 **Sec. 15.** *1. A claim of a constructional defect is properly*
13 *presented to the Commission by filing a complaint with the Board.*

14 *2. The complaint must contain a clear and concise statement*
15 *of the facts of the case, including, without limitation, the persons*
16 *involved and the dates and circumstances, so far as they are*
17 *known, of the alleged constructional defect. The Commission may*
18 *dismiss a complaint if the complaint is filed without an affidavit*
19 *supporting the allegations of the complaint submitted by an expert*
20 *concerning the alleged constructional defect.*

21 *3. The person against whom a complaint is made must,*
22 *within 30 days after receipt of the complaint, file an answer with*
23 *the Board, accompanied by a fee of \$250. The Board may*
24 *authorize an extension of the time in which an answer must be*
25 *filed only if all parties to the action stipulate to the extension.*

26 *4. Unless otherwise stipulated to by all the parties to the*
27 *action, an answer or response that is not timely filed may not be:*

28 *(a) Accepted by the Board; or*

29 *(b) Considered by the Commission.*

30 *5. The claimant may respond only to the allegations of the*
31 *answer or any accompanying affidavit by filing a written response*
32 *with the Board within 15 days after he receives the answer. The*
33 *Commission shall disregard any portion of the response that does*
34 *not address an allegation raised in the answer or an affidavit*
35 *accompanying the answer. No fee may be charged or collected by*
36 *the Board for the filing of the response. The Board may authorize*
37 *an extension of the time in which a response may be filed only if*
38 *all parties to the action stipulate to the extension.*

39 *6. A copy of any pleading required by this section to be filed*
40 *with the Board must be delivered by the party, by certified or*
41 *registered mail or by personal service, to each opposing party or, if*
42 *an opposing party is represented in the proceedings by counsel, to*
43 *his attorney.*

44 *7. The fees provided by this section must not be charged or*
45 *collected more than once from any party.*



1 8. *If a person fails to pay any fee required by this section, the*
2 *Board may refer the nonpayment to the Office of the Attorney*
3 *General for collection of the fee and any costs incurred.*

4 **Sec. 16.** *1. The Board may, by certified or registered mail,*
5 *issue subpoenas as may be required by the Commission, to compel*
6 *the attendance of expert witnesses and, as may be required by the*
7 *parties or the Commission, to compel the production of*
8 *construction records or other materials.*

9 *2. The Board shall keep the material so produced and make it*
10 *available to the parties, upon request, for inspection or copying. If*
11 *the material is reasonably capable of being copied, the Board shall*
12 *provide a copy to the parties, upon request and the receipt of a fee*
13 *for the copying.*

14 *3. If an expert witness refuses to attend or testify or if a*
15 *person refuses to produce any construction records or other*
16 *materials as required by the subpoena, the Board may petition the*
17 *district court for an order compelling the expert witness to attend*
18 *and testify or the other person to produce the construction records*
19 *or other materials. The petition must include a statement*
20 *indicating that:*

21 *(a) Notice has been given of the time and place of attendance*
22 *of the expert witness or for the production of the construction*
23 *records or other materials;*

24 *(b) The expert witness or the person required to produce the*
25 *construction records or other materials has been subpoenaed by*
26 *the Board pursuant to this section; and*

27 *(c) The expert witness has failed or refused to attend or testify,*
28 *to produce the construction records or other materials required by*
29 *the subpoena, or to answer questions propounded to him.*

30 *4. Upon receiving a petition pursuant to subsection 3, the*
31 *court shall enter an order directing the expert witness or other*
32 *person to appear before the court at a time and place to be fixed by*
33 *the court in its order, which is not more than 10 days after the date*
34 *of the order, and show cause why he has not attended, testified, or*
35 *produced the construction records or other materials. A certified*
36 *copy of the order must be served upon the expert witness or other*
37 *person.*

38 *5. If it appears to the court that the subpoena was regularly*
39 *issued by the Board, the court shall enter an order that the expert*
40 *witness or other person appear at the time and place fixed in the*
41 *order and testify or produce the required construction records or*
42 *other materials, and upon his failure to obey the order, the expert*
43 *witness or other person must be dealt with as for contempt of*
44 *court.*



1 **Sec. 17. 1.** *A claim of a constructional defect must be heard*
2 *by the Commission within 45 days after the expiration of the time*
3 *in which to answer the complaint filed pursuant to section 15 of*
4 *this act.*

5 **2.** *The Commission shall consider all the construction*
6 *records or other materials, including, without limitation, the*
7 *complaint, answer and response, construction records and the*
8 *testimony of an expert witness the Commission considers*
9 *necessary, and shall, based on the evidence submitted, determine*
10 *only whether there is a reasonable probability that a*
11 *constructional defect exists and that the claimant was damaged*
12 *thereby.*

13 **3.** *Copies of the original complaint and of the findings of the*
14 *Commission with regard to each matter considered by the*
15 *Commission must be forwarded to the city or county building*
16 *department where the alleged constructional defect occurred, as*
17 *appropriate.*

18 **4.** *The Board shall promptly mail to each party to the claim a*
19 *copy of the findings of the Commission concerning the complaint.*

20 **5.** *The findings must be based upon a vote of the members of*
21 *the Commission made by a written ballot, must be rendered within*
22 *5 days after the hearing on the claim and must be in substantially*
23 *the following form:*

24 **(a)** *Based upon a review of the materials submitted by the*
25 *parties and the testimony of expert witnesses, if any, the*
26 *Commission finds that there is a reasonable probability that a*
27 *constructional defect exists and that the claimant was damaged*
28 *thereby; or*

29 **(b)** *Based upon a review of the materials submitted by the*
30 *parties and the testimony of expert witnesses, if any, the*
31 *Commission finds that there is no reasonable probability that a*
32 *constructional defect exists.*

33 **6.** *A finding made pursuant to paragraph (a) of subsection 5*
34 *must also include the findings of the Commission concerning each*
35 *claim of constructional defect alleged by the claimant.*

36 **Sec. 18. 1.** *If the Commission issues a finding in favor of*
37 *the claimant pursuant to paragraph (a) of subsection 5 of section*
38 *17 of this act, the Commission may order the contractor to:*

39 **(a)** *Make repairs at the contractor's expense, if the contractor*
40 *is licensed to make the repairs; or*

41 **(b)** *Cause the repairs to be made, at the contractor's expense*
42 *and, if insured, his insurer's expense, by another contractor who*
43 *is bonded, insured and licensed to make the repairs.*



1 2. Any repairs ordered pursuant to this section must be
2 completed within 90 days after the contractor is served with a
3 written notice of the order.

4 3. A copy of the order must be served on each party to the
5 claim personally, or by registered or certified mail. The order is
6 effective upon such service, unless the Commission orders
7 otherwise.

8 4. A contractor may petition the Board, by written request
9 supported by an affidavit of the contractor, for an extension of
10 the time for completion of repairs if completion is delayed by the
11 claimant or by any other event beyond the control of the
12 contractor, or if timely completion of the repairs is not reasonably
13 possible.

14 5. The Board may grant one extension of time not to exceed
15 45 days for a contractor to complete the repairs required by the
16 order of the Commission if the extension is timely requested and
17 supported by an affidavit of the contractor. The Board shall
18 provide written notice of any grant or denial of an extension of
19 time to each party to the claim within 10 days after receipt of the
20 request.

21 6. If the contractor fails to comply with an order issued
22 pursuant to this section, upon the written request of the claimant
23 made within 10 days after the expiration of the period for making
24 the repairs or causing the repairs to be made as described in the
25 order, or any authorized extension for the contractor to make the
26 repairs or cause the repairs to be made, the Commission:

27 (a) May cause the repairs to be made, at the constructor's
28 expense and, if insured, at his insurer's expense, by another
29 contractor who is bonded, insured and licensed to make the
30 repairs; and

31 (b) Shall notify the Board in writing of the failure of the
32 contractor to comply with the order. As soon as practicable after
33 receiving a written notice pursuant to this paragraph, the Board
34 shall revoke the license of the contractor.

35 **Sec. 19.** *If the Commission issues a finding that there is no
36 reasonable probability that a constructional defect exists, the
37 Commission shall dismiss the complaint filed in the action
38 pursuant to section 15 of this act.*

39 **Sec. 20.** NRS 624.470 is hereby amended to read as follows:
40 624.470 1. Except as otherwise provided in subsection 3, in
41 addition to the annual fee for a license required pursuant to NRS
42 624.280, a residential contractor shall pay to the Board an annual
43 assessment in the following amount, if the monetary limit on his
44 license is:



1	Not more than \$1,000,000.....	\$100
2	More than \$1,000,000 but limited.....	250
3	Unlimited.....	500

4
5 2. The Board shall administer and account separately for the
6 money received from the annual assessments collected pursuant to
7 subsection 1. The Board may refer to the money in the account as
8 the "Recovery Fund."

9 3. The Board ~~shall~~ :

10 (a) *Shall* suspend the collection of assessments pursuant to
11 subsection 1 when the balance in the account reaches 150 percent of
12 the largest balance in the account during the previous fiscal year ~~;~~ ;
13 *and*

14 (b) *May increase the annual assessment imposed pursuant to*
15 *subsection 1 in an amount that, as determined by the Board, is*
16 *required to pay:*

17 (1) *Any costs and expenses that are incurred to carry out*
18 *the provisions of sections 2 to 19, inclusive, of this act, including,*
19 *without limitation, any costs and expenses incurred by the Office*
20 *of the Attorney General; and*

21 (2) *Any claims for per diem allowances and travel expenses*
22 *of the Constructional Defect Commission pursuant to section 7 of*
23 *this act.*

24 4. Except as otherwise provided in NRS 624.540, the money in
25 the account must be used to pay ~~claims made~~ :

26 (a) *Claims made* by owners who are damaged by the failure of a
27 residential contractor to perform qualified services adequately, as
28 provided in ~~NRS 624.400 to 624.560, inclusive;~~ *sections 2 to 19,*
29 *inclusive, of this act;*

30 (b) *Claims submitted pursuant to section 7 of this act; or*

31 (c) *Any other costs and expenses that are incurred to carry out*
32 *the provisions of sections 2 to 19, inclusive, of this act, including,*
33 *without limitation, any costs and expenses incurred by the Office*
34 *of the Attorney General.*

35 **Sec. 21.** NRS 113.135 is hereby amended to read as follows:

36 113.135 1. Upon signing a sales agreement with the initial
37 purchaser of residential property that was not occupied by the
38 purchaser for more than 120 days after substantial completion of the
39 construction of the residential property, the seller shall:

40 (a) Provide to the initial purchaser a copy of NRS 11.202 to
41 11.206, inclusive, and ~~40.600 to 40.695, inclusive;~~ *sections 2 to*
42 *19, inclusive, of this act;*

43 (b) Notify the initial purchaser of any soil report prepared for the
44 residential property or for the subdivision in which the residential
45 property is located; and



1 (c) If requested in writing by the initial purchaser not later than
2 5 days after signing the sales agreement, provide to the purchaser
3 without cost each report described in paragraph (b) not later than 5
4 days after the seller receives the written request.

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

8 3. The initial purchaser may waive his right to rescind the sales
9 agreement pursuant to subsection 2. Such a waiver is effective only
10 if it is made in a written document that is signed by the purchaser.

11 **Sec. 22.** NRS 116.3115 is hereby amended to read as follows:

12 116.3115 1. Until the association makes an assessment for
13 common expenses, the declarant shall pay all common expenses.
14 After an assessment has been made by the association, assessments
15 must be made at least annually, based on a budget adopted at least
16 annually by the association in accordance with the requirements set
17 forth in NRS 116.31151. Unless the declaration imposes more
18 stringent standards, the budget must include a budget for the daily
19 operation of the association and the money for the reserve required
20 by paragraph (b) of subsection 2.

21 2. Except for assessments under subsections 4 to 7, inclusive:

22 (a) All common expenses, including a reserve, must be assessed
23 against all the units in accordance with the allocations set forth in
24 the declaration pursuant to subsections 1 and 2 of NRS 116.2107.

25 (b) The association shall establish an adequate reserve, funded
26 on a reasonable basis, for the repair, replacement and restoration of
27 the major components of the common elements. The reserve may be
28 used only for those purposes, including, without limitation,
29 repairing, replacing and restoring roofs, roads and sidewalks, and
30 must not be used for daily maintenance.

31 3. Any past due assessment for common expenses or
32 installment thereof bears interest at the rate established by the
33 association not exceeding 18 percent per year.

34 4. To the extent required by the declaration:

35 (a) Any common expense associated with the maintenance,
36 repair, restoration or replacement of a limited common element
37 must be assessed against the units to which that limited common
38 element is assigned, equally, or in any other proportion the
39 declaration provides;

40 (b) Any common expense or portion thereof benefiting fewer
41 than all of the units must be assessed exclusively against the units
42 benefited; and

43 (c) The costs of insurance must be assessed in proportion to risk
44 and the costs of utilities must be assessed in proportion to usage.



1 5. Assessments to pay a judgment against the association may
2 be made only against the units in the common-interest community at
3 the time the judgment was entered, in proportion to their liabilities
4 for common expenses.

5 6. If any common expense is caused by the misconduct of any
6 unit's owner, the association may assess that expense exclusively
7 against his unit.

8 7. The association of a common-interest community created
9 before January 1, 1992, is not required to make an assessment
10 against a vacant lot located within the community that is owned by
11 the declarant.

12 8. If liabilities for common expenses are reallocated,
13 assessments for common expenses and any installment thereof not
14 yet due must be recalculated in accordance with the reallocated
15 liabilities.

16 9. The association shall provide written notice to the owner of
17 each unit of a meeting at which an assessment for a capital
18 improvement or the commencement of a civil action is to be
19 considered or action is to be taken on such an assessment at least 21
20 calendar days before the meeting. Except as otherwise provided in
21 this subsection, the association may commence a civil action only
22 upon a vote or written agreement of the owners of units to which at
23 least a majority of the votes of the members of the association are
24 allocated. The provisions of this subsection do not apply to a civil
25 action that is commenced:

26 (a) To enforce the payment of an assessment;

27 (b) To enforce the declaration, bylaws or rules of the
28 association;

29 (c) To proceed with a counterclaim; or

30 (d) To protect the health, safety and welfare of the members of
31 the association. If a civil action is commenced pursuant to this
32 paragraph without the required vote or agreement, the action must
33 be ratified within 90 days after the commencement of the action by
34 a vote or written agreement of the owners of the units to which at
35 least a majority of votes of the members of the association are
36 allocated. If the association, after making a good faith effort, cannot
37 obtain the required vote or agreement to commence or ratify such a
38 civil action, the association may thereafter seek to dismiss the action
39 without prejudice for that reason only if a vote or written agreement
40 of the owners of the units to which at least a majority of votes of the
41 members of the association are allocated was obtained at the time
42 the approval to commence or ratify the action was sought.

43 10. At least 10 days before an association commences or seeks
44 to ratify the commencement of a civil action, the association shall
45 provide a written statement to all units' owners that includes:



1 (a) A reasonable estimate of the costs of the civil action,
2 including reasonable attorney's fees;

3 (b) An explanation of the potential benefits of the civil action
4 and the potential adverse consequences if the association does not
5 commence the action or if the outcome of the action is not favorable
6 to the association; and

7 (c) All disclosures that are required to be made upon the sale of
8 the property.

9 11. *At any meeting at which the filing of a claim for a*
10 *constructional defect is considered, the executive board shall not*
11 *exclude a public officer from attending the meeting if the public*
12 *officer is invited to attend the meeting by a unit's owner who is*
13 *authorized to attend the meeting. The authority of the public*
14 *officer to attend a meeting pursuant to this subsection is*
15 *coextensive with the authority of the unit's owner to attend the*
16 *meeting pursuant to NRS 116.31085. As used in this subsection:*

17 (a) *"Constructional defect" has the meaning ascribed to it in*
18 *section 5 of this act.*

19 (b) *"Public officer" means:*

20 (1) *The Ombudsman for Owners in Common-Interest*
21 *Communities; and*

22 (2) *Any other person who is an elected or appointed public*
23 *officer.*

24 12. No person other than a unit's owner may request the
25 dismissal of a civil action commenced by the association on the
26 ground that the association failed to comply with any provision of
27 this section.

28 **Sec. 23.** NRS 278.577 is hereby amended to read as follows:

29 278.577 1. Except as otherwise provided in subsection 2, in a
30 county whose population is 100,000 or more, or in any city located
31 within such a county, if the city or county provides for the
32 inspection of structures and the enforcement of building codes
33 pursuant to NRS 278.570, 278.573 and 278.575, the city or county
34 shall:

35 (a) Prepare a list of national and international organizations
36 which certify persons who inspect a structure or a portion of a
37 structure and which are approved by the city or county, as
38 appropriate, for certifying persons pursuant to this subsection;

39 (b) Require a person who fills the position of building official,
40 reviews plans or inspects a structure or building or a portion of a
41 structure or building pursuant to NRS 278.570 or 278.575 to be
42 certified by an organization included on the list prepared pursuant to
43 paragraph (a);

44 (c) Establish requirements for continuing education for a person
45 who is required to be certified pursuant to this subsection; and



1 (d) Prohibit a person who is not certified or does not fulfill the
2 requirements for continuing education pursuant to this subsection
3 from filling the position of building official, reviewing plans or
4 inspecting a structure or building or a portion of a structure or
5 building pursuant to NRS 278.570 or 278.575.

6 2. A city or county specified in subsection 1 may authorize an
7 employee of the city or county to perform duties for which
8 certification is required pursuant to that subsection if those duties
9 are performed under the supervision of a person who is certified by
10 an organization that is included on the list prepared by the city or
11 county pursuant to paragraph (a) of that subsection. The city or
12 county may authorize an employee to perform duties pursuant to
13 this subsection for not more than 1 year.

14 3. The requirements for continuing education established
15 pursuant to paragraph (c) of subsection 1 must:

16 (a) Include the completion of at least 45 hours of continuing
17 education every 3 years; and

18 (b) Specify the manner in which a person may complete those
19 hours.

20 4. In a county whose population is less than 100,000, or in any
21 city located within such a county, if the city or county provides for
22 the inspection of structures and the enforcement of building codes
23 pursuant to NRS 278.570, 278.573 and 278.575, the city or county
24 shall, by resolution, establish the requirements for certifying and for
25 continuing education for a person who, on a full-time basis, fills the
26 position of building official, reviews plans or inspects a structure or
27 building or a portion of a structure or building pursuant to NRS
28 278.570 or 278.575.

29 *5. In addition to the requirements for continuing education
30 established pursuant to this section, each city or county that
31 provides for the inspection of structures and the enforcement of
32 building codes pursuant to NRS 278.570, 278.573 and 278.575
33 shall, by resolution, require each person who:*

34 *(a) Fills the position of building official, reviews plans or
35 inspects a structure or building or a portion of a structure or
36 building pursuant to NRS 278.570 or 278.575; and*

37 *(b) Is required to attend a course of continuing education
38 pursuant to this section,
39 to complete a course of instruction in constructional defects
40 approved by the State Contractors' Board. The resolution must
41 require the person to complete the course annually and must
42 include the requirements for submission of proof of attendance at
43 the course. As used in this subsection, "constructional defect" has
44 the meaning ascribed to it in section 5 of this act.*



1 **Sec. 24.** NRS 40.600, 40.605, 40.610, 40.613, 40.615, 40.620,
2 40.625, 40.630, 40.635, 40.640, 40.645, 40.650, 40.655, 40.660,
3 40.665, 40.667, 40.668, 40.670, 40.672, 40.675, 40.680, 40.682,
4 40.687, 40.688, 40.6881, 40.6882, 40.6883, 40.6884, 40.6885,
5 40.689, 40.690, 40.692 and 40.695 are hereby repealed.

6 **Sec. 25.** 1. Each person who, before October 1, 2003,
7 submitted a claim to recover damages resulting from a
8 constructional defect pursuant to NRS 40.600 to 40.695, inclusive,
9 but who has not filed a civil action concerning the claim, may, if the
10 claim has not been withdrawn, settled or otherwise resolved in
11 accordance with those sections before October 1, 2003, submit the
12 claim to the Constructional Defect Commission for disposition in
13 accordance with the provisions of sections 2 to 19, inclusive, of this
14 act. The claim must be submitted within 1 year after October 1,
15 2003.

16 2. The clerk of each court in this state in which a civil action
17 for damages resulting from a constructional defect has been filed
18 before October 1, 2003, and for which a trial has not been
19 commenced in that court before October 1, 2003, shall, as soon as
20 practicable after October 1, 2003, transmit the file for the civil
21 action to the Constructional Defect Commission for disposition in
22 accordance with the provisions of sections 2 to 19, inclusive, of this
23 act.

24 3. Notwithstanding the provisions of section 24 of this act, if:

25 (a) A civil action for damages resulting from a constructional
26 defect has been filed before October 1, 2003; and

27 (b) A trial for the civil action has been commenced before
28 October 1, 2003,

29 the civil action must be adjudicated in accordance with the
30 provisions of NRS 40.600 to 40.695, inclusive, as if those
31 provisions had not been repealed.

LEADLINES OF REPEALED SECTIONS

40.600 Definitions.
40.605 "Appurtenance" defined.
40.610 "Claimant" defined.
40.613 "Complex matter" defined.
40.615 "Constructional defect" defined.
40.620 "Contractor" defined.
40.625 "Homeowner's warranty" defined.
40.630 "Residence" defined.



* S B 3 7 1 R 1 *

40.635 Applicability; effect on other defenses.

40.640 Liability of contractor.

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.

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.

40.655 Limitation on recovery.

40.660 Nonacceptance of offer of settlement deemed rejection.

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

40.667 Effect of written waiver or settlement agreement when contractor fails to correct or repair defect properly; conditions to bringing action; effect of failure to prevail in action.

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.

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

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

40.675 Inspection of repairs.

40.680 Mediation of certain claims required before action commenced; procedure; appointment of special master; effect of failure to mediate in good faith.

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.

40.687 Disclosure of information concerning warranties after action is commenced; disclosure of information concerning insurance agreements; compelled production of information.

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.

40.6881 Definitions.

40.6882 "Complainant" defined.

40.6883 "Design professional" defined.

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

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

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

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.

40.692 Procedural requirements waived for certain defects included in amended complaint; joinder or intervention of party after action is commenced.

40.695 Tolling of statutes of limitation or repose; applicability.

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