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**Assembly Committee on Judiciary**

This measure may be considered for action during today's work session.

**ASSEMBLY BILL 462**

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

**Sponsored by:** Assemblywoman Carlton  
**Date Heard:** April 11, 2017  
**Fiscal Impact:** **Effect on Local Government:** No.  
**Effect on the State:** No.

This bill revises the definition of "constructional defect" to provide that a constructional defect is a defect which: (1) is done in violation of law; (2) proximately causes physical damage to the residence, appurtenance, or real property to which the residence or appurtenance is affixed; (3) is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry; or (4) presents an unreasonable risk of injury to a person or property.

The bill authorizes one notice to be sent concerning similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects. A homeowner's association is authorized to institute, defend, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community.

The information to be included in a notice of constructional defect must state in reasonable detail, rather than specific detail, the defect or any damage or injury to each residence or appurtenance that is subject to the notice, and describe in reasonable detail the location of the defect rather than state the exact location. The requirement that the owner of the residence or appurtenance include a signed statement in the notice in which the owner verifies that each defect, damage, and injury exists in the residence or appurtenance is removed.

The claimant or a representative of the claimant, and not the claimant and an expert who provided an opinion must be present at the required inspection of the alleged defect. The bill removes a provision of existing law, which requires a claimant to exhaust certain claims under the homeowner's warranty before commencing a cause of action for constructional defects. The bill authorizes a claimant to recover reasonable attorney's fees as part of the claimant's damages in a cause of action for constructional defects.

The statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is changed from 6 years to within 8 years after substantial completion of the improvement. Such an action is authorized to be commenced at any time if the deficiency was a result of willful misconduct or was fraudulently concealed or caused injury to or wrongful death of a person.

**Amendments:** There are two proposed amendments to this measure.

1. The Division of Insurance of the Department of Business and Industry proposed an amendment clarifying Section 12 of the bill. The language of the proposed amendment clarifies the intent for a homeowner to seek recourse under a builder’s warranty, rather than any insurance product or service contract.
2. Scott Canepa, Nevada Justice Association, proposed an amendment revising provisions in *Nevada Revised Statutes* (NRS) 11.202 and Chapter 40 (“Actions and Proceedings in Particular Cases Concerning Property”) of NRS.

NRS 11.202 is hereby amended to read as follows:

**NRS 11.202 Actions for damages for injury to real or personal property or ~~wrongful death~~ caused by deficiency in construction of improvements to real property.**

1. No action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than 6 years after the substantial completion of such an improvement, for the recovery of damages for:

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

(b) Injury to real or personal property caused by any such deficiency; or

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

2. The provisions of this section do not apply:

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

~~(a)~~ (b) To a claim for indemnity or contribution.

~~(b)~~ (c) In an action brought against:

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

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

(Added to NRS by [1983, 1238](#); A [2015, 17](#))

Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

**Award of costs and attorney's fees to prevailing party.**

1. In any action brought pursuant to NRS 40.600 to 40.695, the court shall award to a prevailing party, costs as defined in NRS 18.010 and attorney's fees reasonably incurred in the proceedings, including, without limitation, costs and attorney's fees incurred in any pre-litigation proceedings commenced pursuant to NRS 40.645, and interest upon the amount so awarded.

2. The court shall calculate interest upon the amount awarded pursuant to subsection 1 based upon interest at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 4 percent, on the amount found payable. The rate of interest must be adjusted accordingly on each January 1 and July 1 thereafter until the amount of the judgment is paid.

3. Interest is payable from the date on which notice of constructional defects is first given pursuant to NRS 40.645.

AB 462 Section 1, which states as follows, is being deleted:

Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in subsection 2, not later than 60 days after a contractor receives a notice pursuant to subsection 4 of NRS 40.645 which alleges common constructional defects to residences or appurtenances within a single development and which complies with the requirements of subsection 4 of NRS 40.645 for giving such notice, the contractor may respond to the named owners of the residences or appurtenances in the notice in the manner set forth in NRS 40.6472.*

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

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

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

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

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

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

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

*(f) A statement that if the owner chooses not to request an inspection of the owner's residence or appurtenance, the owner is not precluded from sending a notice pursuant to NRS 40.645 individually or commencing an action or amending a complaint to add a cause of action for a constructional defect individually after complying with the requirements set forth in this section and NRS 40.600 to 40.695, inclusive.*

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

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

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

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

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

AB 462 Section, 3(3), which states as follows, is being deleted:

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

AB 462, Section 4, which states as follows, is being deleted:

NRS 40.615 is hereby amended to read as follows:

40.615 "Constructional defect" means 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 and includes, without limitation, 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:

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

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

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

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

AB 462, Section 6(3 and 4), which states as follows is being deleted:

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

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

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

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

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

AB 462, Section 7(4), which states as follows, is being deleted:

4. *If the notice of a constructional defect forwarded by the contractor was given pursuant to subsection 4 of NRS 40.645 and the contractor provides a disclosure of the notice of the alleged common constructional defects to the unnamed owners to whom the notice may apply pursuant to section 1 of this act:*

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

(b) *Not later than 20 days after receiving notice from the contractor of such a request, the subcontractor, supplier or design professional shall inspect*

*the alleged constructional defect in accordance with subsection 2 of NRS 40.6462 and provide the contractor with a written statement indicating:*

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

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

AB 462, Section 8, which states as follows, is being deleted:

NRS 40.6462 is hereby amended to read as follows:

40.6462     ~~[After]~~

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

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

AB 462, Section 9(1 lines 4 and 5), which states as follows, is being deleted:

40.647     1.     ~~[After]~~ *Except as otherwise provided in section 1 of this act, after*

AB 462, Section 10, which states as follows, is being deleted:

NRS 40.6472 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

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



AB 462, Section 11, which states as follows, is being deleted:

NRS 40.648 is hereby amended to read as follows:

40.6481. If the response provided pursuant to NRS 40.6472 includes an election to repair the constructional defect:

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

(b) The repairs must be performed:

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

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

(3) In a manner which will not increase the cost of maintaining the residence or appurtenance than otherwise would have been required if the residence or appurtenance had been constructed without the constructional defect, unless the contractor and the claimant agree in writing that the contractor will compensate the claimant for the increased cost incurred as a result of the repair.

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

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

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

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

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

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

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

(1) Not later than 105 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or

design professional if the notice of a constructional defect was received from four or fewer owners; or

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

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

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

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

AB462 Proposed Amendment by Nevada Justice Association

Contact Information:  
Scott Canepa  
Nevada Justice Association  
(775) 83-3577

The intent of this amendment is to remove certain sections and clarify the language in others.