

ASSEMBLY BILL NO. 125—COMMITTEE ON JUDICIARY

FEBRUARY 6, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to constructional defects.
(BDR 3-588)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 constructional defects; enacting provisions governing the indemnification of a controlling party by a subcontractor for certain constructional defects; enacting provisions governing wrap-up insurance policies or consolidated insurance programs covering certain claims for constructional defects; authorizing the parties to a claim for a constructional defect to agree to have a judgment entered before the filing of a civil action under certain circumstances; revising the definition of “constructional defect”; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; requiring a claimant to pursue a claim under a homeowner’s warranty under certain circumstances; revising provisions governing the damages recovered by a claimant; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; prohibiting a homeowners’ association from pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.



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Legislative Counsel's Digest:

1 Under existing law, before an owner of a residence or appurtenance or certain
2 other persons may commence a civil action against a contractor, subcontractor,
3 supplier or design professional for certain defects in the residence or appurtenance,
4 the claimant must provide notice of the defect to the contractor. Not later than 30
5 days after the date on which the contractor receives the notice, the contractor must
6 forward a copy of the notice to each subcontractor, supplier or design professional
7 whom the contractor reasonably believes is responsible for a defect specified in the
8 notice. The subcontractor, supplier or design professional who receives the notice
9 must inspect the alleged constructional defect and may elect to repair the defect.
10 (NRS 40.645, 40.646, 40.647)

11 **Section 2** of this bill establishes the circumstances under which a provision in a
12 residential construction contract requiring a subcontractor to indemnify, defend or
13 otherwise hold harmless a controlling party for the negligence or intentional acts or
14 omissions of the controlling party is void and unenforceable. **Section 2** also enacts
15 provisions governing: (1) when a subcontractor's duty to defend a controlling party
16 arises; (2) the manner in which a controlling party may pursue indemnification
17 from a subcontractor when the controlling party is named as an additional insured
18 in the commercial general liability insurance policy of the subcontractor; and (3)
19 wrap-up insurance policies or consolidated insurance programs that cover two or
20 more contractors or subcontractors who perform work on residential construction
21 for risks associated with the construction.

22 Existing law establishes a procedure by which the parties in a civil action may
23 agree to have a judgment entered in the action in accordance with the terms and
24 conditions of an offer of judgment. A court is prohibited from awarding costs or
25 attorney's fees to a party who rejects such an offer of judgment and fails to obtain a
26 more favorable judgment at trial. (NRS 17.115; N.R.C.P. 68) **Section 3** of this bill
27 establishes a similar procedure under which a person who has given notice of a
28 constructional defect and a contractor, subcontractor, supplier or design
29 professional who has received such a notice may agree to have a judgment entered
30 before a civil action for the constructional defect is commenced.

31 **Section 6** of this bill amends the existing definition of "constructional defect"
32 to provide that a constructional defect is a defect: (1) which presents an
33 unreasonable risk of injury to a person or property; or (2) which is not completed in
34 a good and workmanlike manner and proximately causes physical damage to the
35 residence or appurtenance.

36 **Section 8** of this bill amends the provision of existing law requiring certain
37 information to be included in a notice of constructional defect to require the notice
38 to: (1) state in specific detail, rather than in reasonable detail, each defect, damage
39 and injury to each residence or appurtenance that is subject to the notice; (2) state
40 the exact location of each defect, damage and injury, rather than describe in
41 reasonable detail the location of the defect; and (3) include a statement signed by
42 the owner of the residence or appurtenance in the notice that the owner verifies that
43 each defect, damage and injury exists in the residence or appurtenance.

44 **Sections 5, 8-13 and 22** of this bill remove a provision of existing law which
45 authorizes one notice to be sent concerning similarly situated owners of residences
46 or appurtenances within a single development that allegedly have common
47 constructional defects.

48 **Section 11** of this bill requires a claimant and an expert who provided an
49 opinion concerning an alleged constructional defect, or a representative of the
50 expert who has knowledge of the alleged defect, to: (1) be present when a
51 contractor, subcontractor, supplier or design professional conducts the required
52 inspection of the alleged defect; and (2) identify the exact location of the alleged
53 defect.



54 Under existing law, if a residence or appurtenance is covered by a
55 homeowner's warranty that is purchased by or on behalf of the claimant, the
56 claimant must diligently pursue a claim under the contract. (NRS 40.650) **Section**
57 **14** of this bill: (1) prohibits a claimant from filing a notice of constructional defect
58 or pursuing a claim for a constructional defect unless the claimant has submitted a
59 claim under the homeowner's warranty and the insurer has denied the claim; and
60 (2) provides that a claim for a constructional defect may include only the claims
61 that have been denied under the homeowner's warranty. **Section 14** further
62 provides that statutes of limitation or repose are tolled from the time the claimant
63 submits a claim under the homeowner's warranty until 30 days after the insurer
64 denies the claim, in whole or in part.

65 **Section 15** of this bill removes the provision of existing law that provides that a
66 claimant may recover reasonable attorney's fees as part of the claimant's damages
67 in a cause of action for constructional defects. **Section 15** also provides that certain
68 costs recoverable as damages must have been incurred for constructional defects
69 proven by the claimant.

70 Existing law provides that the statutes of limitation and repose applicable to a
71 claim for constructional defects are tolled from the time that a claimant gives notice
72 of a claim for constructional defects until 30 days after the mediation required by
73 existing law is concluded or waived. (NRS 40.695) **Section 16** of this bill provides
74 that the period for which the statutes of limitation and repose are tolled may not
75 exceed 1 year. **Section 16** further authorizes a court to extend the tolling period if
76 the claimant demonstrates good cause for such an extension.

77 Existing law generally limits the period in which an action for damages caused
78 by a deficiency in construction of improvements to real property may be
79 commenced after substantial completion of the improvement. These periods of
80 limitation are known as statutes of repose, and the period set forth in each statute of
81 repose during which an action must be commenced is: (1) for a known deficiency,
82 10 years after substantial completion of the improvement; (2) for a latent
83 deficiency, 8 years after substantial completion of the improvement; and (3) for a
84 patent deficiency, 6 years after substantial completion of the improvement.
85 However, if a deficiency was a result of willful misconduct or was fraudulently
86 concealed, an action may be commenced at any time after substantial completion of
87 the improvement. (NRS 11.202-11.205) **Sections 17-19 and 22** of this bill provide
88 that the statute of repose for all actions for damages caused by a deficiency in
89 construction of improvement to real property is 6 years after substantial completion
90 of the improvement. **Sections 17-19 and 22** also eliminate existing provisions of
91 law that allow such actions to be commenced within 2 years after the date of an
92 injury which occurs during the final year of the particular period of limitation.
93 **Section 21** of this bill: (1) provides that the revised statutes of repose set forth in
94 **sections 17-19** apply retroactively under certain circumstances; and (2) establishes
95 a 1-year grace period during which a person may commence an action under the
96 existing statutes of repose, if the action accrued before the effective date of this bill.

97 Existing law authorizes a homeowners' association to institute, defend or
98 intervene in litigation or in arbitration, mediation or administrative proceedings in
99 its own name on behalf of itself or two or more units' owners on matters affecting
100 the common-interest community. (NRS 116.3102) In *D.R. Horton, Inc. v. Eighth*
101 *Judicial District Court*, 125 Nev. 449 (2009), the Nevada Supreme Court held that
102 existing law grants standing to a homeowners' association to pursue constructional
103 defect claims on behalf of units' owners with respect to constructional defects in
104 individual units. **Sections 5 and 20** of this bill provide that an association may not
105 pursue a constructional defect claim on behalf of itself or units' owners, unless the
106 claim pertains exclusively to the common elements of the association.



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

1 **Section 1.** Chapter 40 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *In any action or other proceeding involving a*
4 *constructional defect asserted by a claimant and governed by NRS*
5 *40.600 to 40.695, inclusive, and sections 2 and 3 of this act:*

6 (a) *Except as otherwise provided in paragraph (b), any*
7 *provision in a contract entered into on or after the effective date of*
8 *this act for residential construction that requires a subcontractor*
9 *to indemnify, defend or otherwise hold harmless a controlling*
10 *party from any liability, claim, action or cause of action resulting*
11 *from a constructional defect caused by the negligence, whether*
12 *active or passive, or intentional act or omission of the controlling*
13 *party is against public policy and is void and unenforceable.*

14 (b) *Except as otherwise provided in paragraph (c), a provision*
15 *in a contract entered into on or after the effective date of this act*
16 *for residential construction is not against public policy and is not*
17 *void and unenforceable under paragraph (a) to the extent that the*
18 *provision requires a subcontractor to indemnify, defend or*
19 *otherwise hold harmless a controlling party from any liability,*
20 *claim, action or cause of action resulting from a constructional*
21 *defect arising out of, related to or connected with the*
22 *subcontractor's scope of work, negligence, or intentional act or*
23 *omission.*

24 (c) *A provision in a contract entered into on or after the*
25 *effective date of this act for residential construction is against*
26 *public policy and is void and unenforceable under paragraph (a)*
27 *to the extent that it requires a subcontractor to defend, indemnify*
28 *or otherwise hold harmless a controlling party from any liability,*
29 *claim, action or cause of action resulting from a constructional*
30 *defect arising out of, related to or connected with that portion of*
31 *the subcontractor's work which has been altered or modified by*
32 *another trade or the controlling party.*

33 (d) *Except as otherwise provided in paragraph (e), if a*
34 *provision of a contract entered into on or after the effective date of*
35 *this act for residential construction that requires a subcontractor*
36 *to indemnify, defend or otherwise hold harmless a controlling*
37 *party is not against public policy and is not void and*
38 *unenforceable under this subsection, the duty of the subcontractor*
39 *to defend the controlling party arises upon presentment of a notice*
40 *pursuant to subsection 1 of NRS 40.646 containing a particular*
41 *claim, action or cause of action from which it can be reasonably*
42 *inferred that an alleged constructional defect was caused by or*



1 *attributable to the subcontractor's work, negligence, or wrongful*
2 *act or omission.*

3 *(e) If a controlling party gives a notice to a subcontractor*
4 *pursuant to NRS 40.646 that contains a claim, action or cause of*
5 *action from which it can be reasonably inferred that an alleged*
6 *constructional defect was caused by or attributable to the*
7 *subcontractor's work, negligence, or wrongful act or omission, the*
8 *claim, action or cause of action is covered by the subcontractor's*
9 *commercial general liability policy of insurance issued by an*
10 *insurer, and the controlling party is named as an additional*
11 *insured under that policy of insurance:*

12 *(1) The controlling party, as an additional insured, must*
13 *pursue available means of recovery of its defense fees and costs*
14 *under the policy before the controlling party is entitled to pursue a*
15 *claim against the subcontractor.*

16 *(2) Upon the final settlement of or issuance of a final*
17 *judgment in an action involving a claim for a constructional*
18 *defect, if the insurer has not assumed the controlling party's*
19 *defense and reimbursed the controlling party for the defense*
20 *obligation of the subcontractor, or if the defense obligation is not*
21 *otherwise resolved by the settlement or final judgment, the*
22 *controlling party has the right to pursue a claim against the*
23 *subcontractor for reimbursement of that portion of the attorney's*
24 *fees and costs incurred by the controlling party which are*
25 *attributable to the claims, actions or causes of action arising out*
26 *of, related to or connected with the subcontractor's scope of work,*
27 *negligence, or intentional act or omission.*

28 *(3) The provisions of subparagraphs (1) and (2) do not*
29 *prohibit a controlling party from:*

30 *(I) Following the requirements of NRS 40.600 to 40.695,*
31 *inclusive, and sections 2 and 3 of this act relating to providing*
32 *notice of an alleged constructional defect or any other procedures*
33 *set forth in those provisions; or*

34 *(II) Filing a third-party complaint against the*
35 *subcontractor if a claimant commences an action or amends a*
36 *complaint to add a cause of action for a constructional defect*
37 *against a controlling party which arises out of, relates to or is*
38 *otherwise connected with the subcontractor's scope of work,*
39 *negligence, or wrongful act or omission.*

40 *2. For any wrap-up insurance policy or other consolidated*
41 *insurance program that covers a subcontractor who performs*
42 *work on residential construction for which a contract is entered*
43 *into on or after the effective date of this act, for claims, actions or*
44 *causes of action for a constructional defect governed by NRS*
45 *40.600 to 40.695, inclusive, and sections 2 and 3 of this act:*



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1 (a) *The controlling party obtaining the wrap-up insurance*
2 *policy or other consolidated insurance program shall disclose the*
3 *total amount or method of calculation of any credit or*
4 *compensation for the premium required from a subcontractor or*
5 *other participant for that wrap-up insurance policy in the contract*
6 *documents.*

7 (b) *Except as otherwise provided in paragraph (c), the contract*
8 *documents must disclose, if and to the extent known:*

9 (1) *The policy limits;*

10 (2) *The scope of policy coverage;*

11 (3) *The policy term;*

12 (4) *The basis upon which the deductible or occurrence is*
13 *triggered by the insurer;*

14 (5) *If the policy covers more than one work of*
15 *improvement, the number of units, if any, indicated on the*
16 *application for the insurance policy; and*

17 (6) *A good faith estimate of the amount of available limits*
18 *remaining under the policy as of a date indicated in the disclosure*
19 *obtained from the insurer.*

20 (c) *The disclosure requirements of subparagraphs (1) to (4),*
21 *inclusive, of paragraph (b) may be satisfied by providing the*
22 *participant with a copy of the binder or declaration.*

23 (d) *The disclosures made pursuant to subparagraphs (5) and*
24 *(6) of paragraph (b):*

25 (1) *May be based upon information available at the time*
26 *the disclosure is made and are not inaccurate or made in bad faith*
27 *solely because the disclosures do not accurately reflect the actual*
28 *number of units covered by the policy or the amount of insurance*
29 *available, if any, when a later claim is made.*

30 (2) *Are presumptively made in good faith if:*

31 (I) *The disclosure pursuant to subparagraph (5) of*
32 *paragraph (b) is the same as that contained in the application to*
33 *the wrap-up insurance policy insurer; and*

34 (II) *The disclosure pursuant to subparagraph (6) of*
35 *paragraph (b) was obtained from the wrap-up insurance policy*
36 *insurer or broker.*

37 ↪ *The presumptions stated in subparagraph (2) may be overcome*
38 *only by a showing that the insurer, broker or controlling party*
39 *intentionally misrepresented the facts identified in subparagraph*
40 *(5) or (6) of paragraph (b).*

41 (e) *Upon the written request of any participant in the wrap-up*
42 *insurance policy or consolidated insurance program, a copy of the*
43 *insurance policy must be provided, if available, that shows the*
44 *coverage terms and items in subparagraphs (1) to (5), inclusive, of*
45 *paragraph (b). If the policy is not available at the time of the*



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1 *request, a copy of the insurance binder or declaration of coverage*
2 *may be provided in lieu of the actual policy.*

3 *(f) Any party receiving a copy of the policy, binder or*
4 *declaration shall not disclose it to third parties other than the*
5 *participant's insurance broker or attorney unless required to do so*
6 *by law. The participant's insurance broker or attorney may not*
7 *disclose the policy, binder or declaration to any third party unless*
8 *required to do so by law.*

9 *(g) If the controlling party obtaining the wrap-up insurance*
10 *policy or other consolidated insurance program does not disclose*
11 *the total amount or method of calculation of the premium credit or*
12 *compensation to be charged to the participant before the time the*
13 *participant submits its bid, the participant is not legally bound by*
14 *the bid unless that participant has the right to increase the bid up*
15 *to the amount equal to the difference between the amount the*
16 *participant included, if any, for insurance in the original bid and*
17 *the amount of the actual bid credit required by the controlling*
18 *party obtaining the wrap-up insurance policy or other*
19 *consolidated insurance program. This paragraph does not apply if*
20 *the controlling party obtaining the wrap-up insurance policy or*
21 *other consolidated insurance program did not require the*
22 *subcontractor to offset the original bid amount with a deduction*
23 *for the wrap-up insurance policy or program.*

24 *(h) The subcontractor's monetary obligation for enrollment in*
25 *the wrap-up insurance policy or consolidated insurance program*
26 *ceases upon the subcontractor's satisfaction of its agreed*
27 *contribution percentage, which may have been paid either as a*
28 *lump sum or on a pro rata basis throughout the subcontractor's*
29 *performance of the work.*

30 *(i) In the event of an occurrence, the dollar amount required*
31 *to be paid by a subcontractor as a self-insured retention or*
32 *deductible must not be greater than the amount that the*
33 *subcontractor would have otherwise been required to pay as a self-*
34 *insured retention or deductible under a commercial general*
35 *liability policy of comparable insurance in force during the*
36 *relevant period for that particular subcontractor and within the*
37 *specific market at the time the subcontract is entered into.*

38 **3. As used in this section:**

39 *(a) "Controlling party" means a person who owns real*
40 *property involved in residential construction, a contractor or any*
41 *other person who is to be indemnified by a provision in a contract*
42 *entered into on or after the effective date of this act for residential*
43 *construction.*



1 (b) "Residential construction" means the construction of a
2 new residence, of an alteration of or addition to an existing
3 residence, or of an appurtenance.

4 (c) "Wrap-up insurance policy" is an insurance policy, or
5 series of policies, written to cover risks associated with the
6 construction, repair or landscaping of a new residence, of an
7 alteration of or addition to an existing residence, or of an
8 appurtenance, and covering two or more of the contractors or
9 subcontractors that work on that construction, repair or
10 landscaping.

11 **Sec. 3. 1.** At any time after a claimant has given notice
12 pursuant to NRS 40.645 and before the claimant commences an
13 action or amends a complaint to add a cause of action for a
14 constructional defect against a contractor, subcontractor, supplier
15 or design professional, the claimant or any contractor,
16 subcontractor, supplier or design professional who has received
17 notice pursuant to NRS 40.645 or 40.646 may serve upon one or
18 more other parties a written offer to allow judgment to be entered
19 without action in accordance with the terms and conditions of the
20 offer of judgment.

21 2. Except as otherwise provided in subsection 7, if, within 10
22 days after the date of service of an offer of judgment, the party to
23 whom the offer was made serves written notice that the offer is
24 accepted, the party who made the offer or the party who accepted
25 the offer may file the offer, the notice of acceptance and proof of
26 service with the clerk of the district court. Upon receipt by the
27 clerk, the clerk shall enter a judgment according to the terms of
28 the offer. Any judgment entered pursuant to this section shall be
29 deemed a compromise settlement. The judgment, the offer, the
30 notice of acceptance and proof of service, with the judgment
31 endorsed, become the judgment roll.

32 3. If the offer of judgment is not accepted pursuant to
33 subsection 2 within 10 days after the date of service, the offer shall
34 be deemed rejected by the party to whom it was made and
35 withdrawn by the party who made it. The rejection of an offer does
36 not preclude any party from making another offer pursuant to this
37 section. Evidence of a rejected offer is not admissible in any
38 proceeding other than a proceeding to determine costs and fees.

39 4. Except as otherwise provided in this section, if a party who
40 rejects an offer of judgment fails to obtain a more favorable
41 judgment in an action for a constructional defect, the court:

42 (a) May not award to the party any costs or attorney's fees;

43 (b) May not award to the party any interest on the judgment
44 for the period from the date of service of the offer to the date of
45 entry of the judgment;



1 (c) Shall order the party to pay the taxable costs incurred by
2 the party who made the offer; and

3 (d) May order the party to pay to the party who made the offer
4 any or all of the following:

5 (1) A reasonable sum to cover any costs incurred by the
6 party who made the offer for each expert witness whose services
7 were reasonably necessary to prepare for and conduct the trial of
8 the case.

9 (2) Any applicable interest on the judgment for the period
10 from the date of service of the offer to the date of entry of the
11 judgment.

12 (3) Reasonable attorney's fees incurred by the party who
13 made the offer for the period from the date of service of the offer
14 to the date of entry of the judgment. If the attorney of the party
15 who made the offer is collecting a contingent fee, the amount of
16 any attorney's fees awarded to the party pursuant to this
17 subparagraph must be deducted from that contingent fee.

18 5. To determine whether a party who rejected an offer of
19 judgment failed to obtain a more favorable judgment:

20 (a) If the offer provided that the court would award costs, the
21 court must compare the amount of the offer with the principal
22 amount of the judgment, without inclusion of costs.

23 (b) If the offer precluded a separate award of costs, the court
24 must compare the amount of the offer with the sum of:

25 (1) The principal amount of the judgment; and

26 (2) The amount of taxable costs that the claimant who
27 obtained the judgment incurred before the date of service of the
28 offer.

29 6. Multiple parties may make a joint offer of judgment
30 pursuant to this section.

31 7. A party may make to two or more other parties pursuant to
32 this section an apportioned offer of judgment that is conditioned
33 upon acceptance by all the parties to whom the apportioned offer
34 is made. Each party to whom such an offer is made may serve
35 upon the party who made the offer a separate written notice of
36 acceptance of the offer. If any party rejects the apportioned offer:

37 (a) The action must proceed as to all parties to whom the
38 apportioned offer was made, whether or not the other parties
39 accepted or rejected the offer; and

40 (b) The sanctions set forth in subsection 4:

41 (1) Apply to each party who rejected the apportioned offer.

42 (2) Do not apply to any party who accepted the apportioned
43 offer.

44 8. The sanctions set forth in subsection 4 do not apply to:



1 (a) *An offer of judgment made to multiple parties who received*
2 *a notice pursuant to NRS 40.645 or 40.646 unless the same person*
3 *is authorized to decide whether to settle the claims against all the*
4 *parties to whom the offer is made and:*

5 (1) *There is a single common theory of liability against all*
6 *the parties to whom the offer is made;*

7 (2) *The liability of one or more of the parties to whom the*
8 *offer is made is entirely derivative of the liability of the remaining*
9 *parties to whom the offer is made; or*

10 (3) *The liability of all the parties to whom the offer is made*
11 *is entirely derivative of a common act or omission by another*
12 *person.*

13 (b) *An offer of judgment made to multiple claimants unless the*
14 *same person is authorized to decide whether to settle the claims of*
15 *all the claimants to whom the offer is made and:*

16 (1) *There is a single common theory of liability claimed by*
17 *all the claimants to whom the offer is made;*

18 (2) *The damages claimed by one or more of the claimants*
19 *to whom the offer is made are entirely derivative of an injury to*
20 *the remaining claimants to whom the offer is made; or*

21 (3) *The damages claimed by all the claimants to whom the*
22 *offer is made are entirely derivative of an injury to another person.*

23 **Sec. 4.** NRS 40.600 is hereby amended to read as follows:

24 40.600 As used in NRS 40.600 to 40.695, inclusive, *and*
25 *sections 2 and 3 of this act*, unless the context otherwise requires,
26 the words and terms defined in NRS 40.603 to 40.634, inclusive,
27 have the meanings ascribed to them in those sections.

28 **Sec. 5.** NRS 40.610 is hereby amended to read as follows:

29 40.610 "Claimant" means:

30 1. An owner of a residence or appurtenance; *or*

31 2. A representative of a homeowners' association ~~that is~~
32 ~~responsible for a residence or appurtenance and is~~ acting within the
33 scope of the representative's duties pursuant to chapter 116 or 117
34 of NRS. ~~† or~~

35 ~~—3.— Each owner of a residence or appurtenance to whom a notice~~
36 ~~applies pursuant to subsection 4 of NRS 40.645.†~~

37 **Sec. 6.** NRS 40.615 is hereby amended to read as follows:

38 40.615 "Constructional defect" means a defect in the design,
39 construction, manufacture, repair or landscaping of a new residence,
40 of an alteration of or addition to an existing residence, or of an
41 appurtenance and includes, without limitation, the design,
42 construction, manufacture, repair or landscaping of a new residence,
43 of an alteration of or addition to an existing residence, or of an
44 appurtenance:



1 1. Which ~~is done in violation of law, including, without~~
2 ~~limitation, in violation of local codes or ordinances;~~

3 ~~—2.— Which} presents an unreasonable risk of injury to a person~~
4 ~~or property; or~~

5 2. Which is not completed in a good and workmanlike
6 manner and proximately causes physical damage to the residence,
7 an appurtenance or the real property to which the residence or
8 appurtenance is affixed. †

9 ~~—3.— Which is not completed in a good and workmanlike manner~~
10 ~~in accordance with the generally accepted standard of care in the~~
11 ~~industry for that type of design, construction, manufacture, repair or~~
12 ~~landscaping; or~~

13 ~~—4.— Which presents an unreasonable risk of injury to a person or~~
14 ~~property.†~~

15 **Sec. 7.** NRS 40.635 is hereby amended to read as follows:

16 40.635 NRS 40.600 to 40.695, inclusive †† , and sections 2
17 and 3 of this act:

18 1. Apply to any claim that arises before, on or after July 1,
19 1995, as the result of a constructional defect, except a claim for
20 personal injury or wrongful death, if the claim is the subject of an
21 action commenced on or after July 1, 1995.

22 2. Prevail over any conflicting law otherwise applicable to the
23 claim or cause of action.

24 3. Do not bar or limit any defense otherwise available, except
25 as otherwise provided in those sections.

26 4. Do not create a new theory upon which liability may be
27 based, except as otherwise provided in those sections.

28 **Sec. 8.** NRS 40.645 is hereby amended to read as follows:

29 40.645 1. Except as otherwise provided in this section and
30 NRS 40.670, before a claimant commences an action or amends a
31 complaint to add a cause of action for a constructional defect against
32 a contractor, subcontractor, supplier or design professional, the
33 claimant:

34 (a) Must give written notice by certified mail, return receipt
35 requested, to the contractor, at the contractor's address listed in the
36 records of the State Contractors' Board or in the records of the
37 office of the county or city clerk or at the contractor's last known
38 address if the contractor's address is not listed in those records; and

39 (b) May give written notice by certified mail, return receipt
40 requested, to any subcontractor, supplier or design professional
41 known to the claimant who may be responsible for the
42 constructional defect, if the claimant knows that the contractor is no
43 longer licensed in this State or that the contractor no longer acts as a
44 contractor in this State.

45 2. The notice given pursuant to subsection 1 must:



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1 (a) Include a statement that the notice is being given to satisfy
2 the requirements of this section;

3 ~~(b) [Specify in reasonable detail the defects or any damages or~~
4 ~~injuries]~~ *Identify in specific detail each defect, damage and injury*
5 *to each residence or appurtenance that is the subject of the claim [;*
6 ~~and]~~ *, including, without limitation, the exact location of each*
7 *such defect, damage and injury;*

8 (c) Describe in reasonable detail the cause of the defects if the
9 cause is known [;] *and* the nature and extent that is known of the
10 damage or injury resulting from the defects ~~[and the location of each~~
11 ~~defect within each residence or appurtenance to the extent known:~~

12 ~~—3.— Notice that includes an expert opinion concerning the cause~~
13 ~~of the constructional defects and the nature and extent of the damage~~
14 ~~or injury resulting from the defects which is based on a valid and~~
15 ~~reliable representative sample of the components of the residences~~
16 ~~or appurtenances may be used as notice of the common~~
17 ~~constructional defects within the residences or appurtenances to~~
18 ~~which the expert opinion applies:~~

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

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

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

31 ~~—(c) A copy of the expert opinion is included with the notice.~~

32 ~~—5.] ; and~~

33 *(d) Include a signed statement, by each named owner of a*
34 *residence or appurtenance in the notice, that each such owner*
35 *verifies that each such defect, damage and injury specified in the*
36 *notice exists in the residence or appurtenance owned by him or*
37 *her. If a notice is sent on behalf of a homeowners' association, the*
38 *statement required by this paragraph must be signed under*
39 *penalty of perjury by a member of the executive board or an*
40 *officer of the homeowners' association.*

41 **3.** A representative of a homeowners' association may send
42 notice pursuant to this section on behalf of an association ~~[that is~~
43 ~~responsible for a residence or appurtenance]~~ if the representative is
44 acting within the scope of the representative's duties pursuant to
45 chapter 116 or 117 of NRS.



1 ~~16.1~~ 4. Notice is not required pursuant to this section before
2 commencing an action if:

3 (a) The contractor, subcontractor, supplier or design professional
4 has filed an action against the claimant; or

5 (b) The claimant has filed a formal complaint with a law
6 enforcement agency against the contractor, subcontractor, supplier
7 or design professional for threatening to commit or committing an
8 act of violence or a criminal offense against the claimant or the
9 property of the claimant.

10 **Sec. 9.** NRS 40.646 is hereby amended to read as follows:

11 40.646 1. Except as otherwise provided in subsection 2, not
12 later than 30 days after the date on which a contractor receives
13 notice of a constructional defect pursuant to NRS 40.645, the
14 contractor shall forward a copy of the notice by certified mail, return
15 receipt requested, to the last known address of each subcontractor,
16 supplier or design professional whom the contractor reasonably
17 believes is responsible for a defect specified in the notice.

18 2. If a contractor does not provide notice as required pursuant
19 to subsection 1, the contractor may not commence an action against
20 the subcontractor, supplier or design professional related to the
21 constructional defect unless the contractor demonstrates that, after
22 making a good faith effort, the contractor was unable to identify the
23 subcontractor, supplier or design professional whom the contractor
24 believes is responsible for the defect within the time provided
25 pursuant to subsection 1.

26 3. ~~Except as otherwise provided in subsection 4, not~~ **Not** later
27 than 30 days after receiving notice from the contractor pursuant to
28 this section, the subcontractor, supplier or design professional shall
29 inspect the alleged constructional defect in accordance with
30 ~~subsection 1 of~~ NRS 40.6462 and provide the contractor with a
31 written statement indicating:

32 (a) Whether the subcontractor, supplier or design professional
33 has elected to repair the defect for which the contractor believes the
34 subcontractor, supplier or design professional is responsible; and

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

40 4. ~~If the notice of a constructional defect forwarded by the~~
41 ~~contractor was given pursuant to subsection 4 of NRS 40.645 and~~
42 ~~the contractor provides a disclosure of the notice of the alleged~~
43 ~~common constructional defects to the unnamed owners to whom the~~
44 ~~notice may apply pursuant to NRS 40.6452:~~



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

7 ~~—(b) Not later than 20 days after receiving notice from the~~
8 ~~contractor of such a request, the subcontractor, supplier or design~~
9 ~~professional shall inspect the alleged constructional defect in~~
10 ~~accordance with subsection 2 of NRS 40.6462 and provide the~~
11 ~~contractor with a written statement indicating:~~

12 ~~—(1) Whether the subcontractor, supplier or design~~
13 ~~professional has elected to repair the defect for which the contractor~~
14 ~~believes the subcontractor, supplier or design professional is~~
15 ~~responsible; and~~

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

21 ~~—5.†~~ If a subcontractor, supplier or design professional elects to
22 repair the constructional defect, the contractor or claimant may hold
23 the subcontractor liable for any repair which does not eliminate the
24 defect.

25 **Sec. 10.** NRS 40.6462 is hereby amended to read as follows:

26 40.6462 ~~†1. Except as otherwise provided in subsection 2,~~
27 ~~after} After~~ notice of a constructional defect is given to a contractor
28 pursuant to NRS 40.645, the claimant shall, upon reasonable notice,
29 allow the contractor and each subcontractor, supplier or design
30 professional who may be responsible for the alleged defect
31 reasonable access to the residence or appurtenance that is the subject
32 of the notice to determine the nature and extent of a constructional
33 defect and the nature and extent of repairs that may be necessary. To
34 the extent possible, the persons entitled to inspect shall coordinate
35 and conduct the inspections in a manner which minimizes the
36 inconvenience to the claimant.

37 ~~†2. If notice is given to the contractor pursuant to subsection 4~~
38 ~~of NRS 40.645, the contractor and each subcontractor, supplier or~~
39 ~~design professional who may be responsible for the defect do not~~
40 ~~have the right to inspect the residence or appurtenance of an owner~~
41 ~~who is not named in the notice unless the owner requests the~~
42 ~~inspection in the manner set forth in NRS 40.6452. If the owner~~
43 ~~does not request the inspection, the owner shall be deemed not to~~
44 ~~have provided notice pursuant to NRS 40.645.†~~



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1 **Sec. 11.** NRS 40.647 is hereby amended to read as follows:

2 40.647 1. ~~Except as otherwise provided in NRS 40.6452,~~
3 ~~after~~ *After* notice of a constructional defect is given pursuant to
4 NRS 40.645, before a claimant may commence an action or amend a
5 complaint to add a cause of action for a constructional defect against
6 a contractor, subcontractor, supplier or design professional, the
7 claimant must:

8 (a) Allow an inspection of the alleged constructional defect to be
9 conducted pursuant to NRS 40.6462; ~~and~~

10 (b) *Be present at an inspection conducted pursuant to NRS*
11 *40.6462 and identify the exact location of each alleged*
12 *constructional defect specified in the notice and, if the notice*
13 *includes an expert opinion concerning the alleged constructional*
14 *defect, the expert, or a representative of the expert who has*
15 *knowledge of the alleged constructional defect, must also be*
16 *present at the inspection and identify the exact location of each*
17 *alleged constructional defect for which the expert provided an*
18 *opinion; and*

19 (c) Allow the contractor, subcontractor, supplier or design
20 professional a reasonable opportunity to repair the constructional
21 defect or cause the defect to be repaired if an election to repair is
22 made pursuant to NRS 40.6472.

23 2. If a claimant commences an action without complying with
24 subsection 1 or NRS 40.645, the court shall:

25 (a) Dismiss the action without prejudice and compel the
26 claimant to comply with those provisions before filing another
27 action; or

28 (b) If dismissal of the action would prevent the claimant from
29 filing another action because the action would be procedurally
30 barred by the statute of limitations or statute of repose, the court
31 shall stay the proceeding pending compliance with those provisions
32 by the claimant.

33 **Sec. 12.** NRS 40.6472 is hereby amended to read as follows:

34 40.6472 1. Except as otherwise provided in NRS ~~40.6452,~~
35 40.670 and 40.672, a written response must be sent by certified
36 mail, return receipt requested, to a claimant who gives notice of a
37 constructional defect pursuant to NRS 40.645:

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

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

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



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

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

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

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

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

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

27 **Sec. 13.** NRS 40.648 is hereby amended to read as follows:

28 40.648 1. If the response provided pursuant to NRS 40.6472
29 includes an election to repair the constructional defect:

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

35 (b) The repairs must be performed:

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

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

41 (3) In a manner which will not increase the cost of
42 maintaining the residence or appurtenance than otherwise would
43 have been required if the residence or appurtenance had been
44 constructed without the constructional defect, unless the contractor



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1 and the claimant agree in writing that the contractor will compensate
2 the claimant for the increased cost incurred as a result of the repair.

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

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

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

12 (a) ~~If the notice was sent pursuant to subsection 4 of NRS~~
13 ~~40.645 and there are four or fewer owners named in the notice, for~~
14 ~~the named owners, not later than 105 days after the date on which~~
15 ~~the contractor received the notice.~~

16 ~~(b) If the notice was sent pursuant to subsection 4 of NRS~~
17 ~~40.645 and there are five or more owners named in the notice, for~~
18 ~~the named owners, not later than 150 days after the date on which~~
19 ~~the contractor received the notice.~~

20 ~~(c) If the notice was sent pursuant to subsection 4 of NRS~~
21 ~~40.645, not later than 105 days after the date on which the~~
22 ~~contractor provides a disclosure of the notice to the unnamed~~
23 ~~owners to whom the notice applies pursuant to NRS 40.6452.~~

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

26 ~~(1)~~ Not later than 105 days after the date on which the
27 notice of the constructional defect was received by the contractor,
28 subcontractor, supplier or design professional if the notice of a
29 constructional defect was received from four or fewer owners; or

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

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

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

44 5. Not later than 30 days after the repairs are completed, the
45 contractor, subcontractor, supplier or design professional who



1 repaired or caused the repair of a constructional defect shall provide
2 the claimant with a written statement describing the nature and
3 extent of the repair, the method used to repair the constructional
4 defect and the extent of any materials or parts that were replaced
5 during the repair.

6 **Sec. 14.** NRS 40.650 is hereby amended to read as follows:

7 40.650 1. If a claimant unreasonably rejects a reasonable
8 written offer of settlement made as part of a response pursuant to
9 paragraph (b) of subsection 2 of NRS 40.6472 and thereafter
10 commences an action governed by NRS 40.600 to 40.695, inclusive,
11 *and sections 2 and 3 of this act*, the court in which the action is
12 commenced may:

13 (a) Deny the claimant's attorney's fees and costs; and

14 (b) Award attorney's fees and costs to the contractor.

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

18 2. If a contractor, subcontractor, supplier or design professional
19 fails to:

20 (a) Comply with the provisions of NRS 40.6472;

21 (b) Make an offer of settlement;

22 (c) Make a good faith response to the claim asserting no
23 liability;

24 (d) Agree to a mediator or accept the appointment of a mediator
25 pursuant to NRS 40.680; or

26 (e) Participate in mediation,

27 ➔ the limitations on damages and defenses to liability provided in
28 NRS 40.600 to 40.695, inclusive, *and sections 2 and 3 of this act*
29 do not apply and the claimant may commence an action or amend a
30 complaint to add a cause of action for a constructional defect
31 without satisfying any other requirement of NRS 40.600 to 40.695,
32 inclusive ~~+~~, *and sections 2 and 3 of this act*.

33 3. If a residence or appurtenance that is the subject of the claim
34 is covered by a homeowner's warranty that is purchased by or on
35 behalf of a claimant pursuant to NRS 690B.100 to 690B.180,
36 inclusive ~~+~~, *a claimant shall diligently pursue a claim under the*
37 *contract.* ~~+~~:

38 (a) *A claimant may not send a notice pursuant to NRS 40.645*
39 *or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive,*
40 *and sections 2 and 3 of this act unless the claimant has first*
41 *submitted a claim under the homeowner's warranty and the*
42 *insurer has denied the claim.*

43 (b) *A claimant may include in a notice given pursuant to NRS*
44 *40.645 only claims for the constructional defects that were denied*
45 *by the insurer.*



1 (c) If coverage under a homeowner's warranty is denied by an
2 insurer in bad faith, the homeowner and the contractor,
3 subcontractor, supplier or design professional have a right of action
4 for the sums that would have been paid if coverage had been
5 provided, plus reasonable attorney's fees and costs.

6 (d) *Statutes of limitation or repose applicable to a claim based*
7 *on a constructional defect governed by NRS 40.600 to 40.695,*
8 *inclusive, and sections 2 and 3 of this act are tolled from the time*
9 *notice of the claim under the homeowner's warranty is submitted*
10 *to the insurer until 30 days after the insurer rejects the claim, in*
11 *whole or in part, in writing.*

12 4. Nothing in this section prohibits an offer of judgment
13 pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS
14 17.115 ~~if the offer of judgment includes all damages to which the~~
15 ~~claimant is entitled pursuant to NRS 40.655.~~ *or section 3 of this*
16 *act.*

17 **Sec. 15.** NRS 40.655 is hereby amended to read as follows:

18 40.655 1. Except as otherwise provided in NRS 40.650, in a
19 claim governed by NRS 40.600 to 40.695, inclusive, *and sections 2*
20 *and 3 of this act*, the claimant may recover only the following
21 damages to the extent proximately caused by a constructional
22 defect:

23 (a) ~~Any reasonable attorney's fees;~~

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

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

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

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

35 ~~(f)~~ (e) Any additional costs reasonably incurred by the
36 claimant ~~for~~ *for constructional defects proven by the claimant,*
37 including, but not limited to, any costs and fees incurred for the
38 retention of experts to:

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

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

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

45 ~~(g)~~ (f) Any interest provided by statute.



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

3 ~~—3.~~ If a contractor complies with the provisions of NRS 40.600
4 to 40.695, inclusive, *and sections 2 and 3 of this act*, the claimant
5 may not recover from the contractor, as a result of the constructional
6 defect, ~~anything~~ *any damages* other than ~~that which is provided~~
7 *damages authorized* pursuant to NRS 40.600 to 40.695, inclusive ~~f-~~
8 ~~—4.~~ *, and sections 2 and 3 of this act.*

9 3. This section must not be construed as impairing any
10 contractual rights between a contractor and a subcontractor, supplier
11 or design professional.

12 ~~5.~~ 4. As used in this section, "structural failure" means
13 physical damage to the load-bearing portion of a residence or
14 appurtenance caused by a failure of the load-bearing portion of the
15 residence or appurtenance.

16 **Sec. 16.** NRS 40.695 is hereby amended to read as follows:

17 40.695 1. Except as otherwise provided in ~~subsection~~
18 *subsections 2 and 3*, statutes of limitation or repose applicable to
19 a claim based on a constructional defect governed by NRS 40.600 to
20 40.695, inclusive, *and sections 2 and 3 of this act* are tolled from
21 the time notice of the claim is given, until ~~30~~ *the earlier of:*

22 (a) *One year after notice of the claim is given; or*

23 (b) *Thirty days after mediation is concluded or waived in*
24 *writing pursuant to NRS 40.680.*

25 2. *Statutes of limitation and repose may be tolled under this*
26 *section for a period longer than 1 year after notice of the claim is*
27 *given only if, in an action for a constructional defect brought by a*
28 *claimant after the applicable statute of limitation or repose has*
29 *expired, the claimant demonstrates to the satisfaction of the court*
30 *that good cause exists to toll the statutes of limitation and repose*
31 *under this section for a longer period.*

32 3. Tolling under this section applies to a third party regardless
33 of whether the party is required to appear in the proceeding.

34 **Sec. 17.** NRS 11.202 is hereby amended to read as follows:

35 11.202 1. ~~An~~ *No* action may be commenced against the
36 owner, occupier or any person performing or furnishing the design,
37 planning, supervision or observation of construction, or the
38 construction of an improvement to real property ~~at any time~~ *more*
39 *than 6 years* after the substantial completion of such an
40 improvement, for the recovery of damages for:

41 (a) Any deficiency in the design, planning, supervision or
42 observation of construction or the construction of such an
43 improvement ; ~~which is the result of his or her willful misconduct~~
44 ~~or which he or she fraudulently concealed;~~



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

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

5 2. The provisions of this section do not apply ~~¶¶~~ :

6 (a) *To a claim for indemnity or contribution.*

7 (b) *In an action brought against:*

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

11 ~~¶(b)~~ (2) Any person on account of a defect in a product.

12 **Sec. 18.** NRS 11.2055 is hereby amended to read as follows:

13 11.2055 1. Except as otherwise provided in subsection 2, for
14 the purposes of *this section and* NRS 11.202 , ~~to 11.206,~~
15 ~~inclusive,~~ the date of substantial completion of an improvement to
16 real property shall be deemed to be the date on which:

17 (a) The final building inspection of the improvement is
18 conducted;

19 (b) A notice of completion is issued for the improvement; or

20 (c) A certificate of occupancy is issued for the improvement,
21 → whichever occurs later.

22 2. If none of the events described in subsection 1 occurs, the
23 date of substantial completion of an improvement to real property
24 must be determined by the rules of the common law.

25 **Sec. 19.** NRS 113.135 is hereby amended to read as follows:

26 113.135 1. Upon signing a sales agreement with the initial
27 purchaser of residential property that was not occupied by the
28 purchaser for more than 120 days after substantial completion of the
29 construction of the residential property, the seller shall:

30 (a) Provide to the initial purchaser a copy of NRS 11.202 ~~to~~
31 ~~11.206, inclusive,~~ , *11.2055* and 40.600 to 40.695, inclusive ~~¶~~ ,
32 *and sections 2 and 3 of this act;*

33 (b) Notify the initial purchaser of any soil report prepared for the
34 residential property or for the subdivision in which the residential
35 property is located; and

36 (c) If requested in writing by the initial purchaser not later than
37 5 days after signing the sales agreement, provide to the purchaser
38 without cost each report described in paragraph (b) not later than 5
39 days after the seller receives the written request.

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

43 3. The initial purchaser may waive his or her right to rescind
44 the sales agreement pursuant to subsection 2. Such a waiver is



1 effective only if it is made in a written document that is signed by
2 the purchaser.

3 **Sec. 20.** NRS 116.3102 is hereby amended to read as follows:

4 116.3102 1. Except as otherwise provided in this chapter, and
5 subject to the provisions of the declaration, the association:

6 (a) Shall adopt and, except as otherwise provided in the bylaws,
7 may amend bylaws and may adopt and amend rules and regulations.

8 (b) Shall adopt and may amend budgets in accordance with the
9 requirements set forth in NRS 116.31151, may collect assessments
10 for common expenses from the units' owners and may invest funds
11 of the association in accordance with the requirements set forth in
12 NRS 116.311395.

13 (c) May hire and discharge managing agents and other
14 employees, agents and independent contractors.

15 (d) May institute, defend or intervene in litigation or in
16 arbitration, mediation or administrative proceedings in its own name
17 on behalf of itself or two or more units' owners on matters affecting
18 the common-interest community. *The association may not institute,
19 defend or intervene in litigation or in arbitration, mediation or
20 administrative proceedings in its own name on behalf of itself or
21 units' owners with respect to an action for a constructional defect
22 pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3
23 of this act unless the action pertains exclusively to common
24 elements.*

25 (e) May make contracts and incur liabilities. Any contract
26 between the association and a private entity for the furnishing of
27 goods or services must not include a provision granting the private
28 entity the right of first refusal with respect to extension or renewal
29 of the contract.

30 (f) May regulate the use, maintenance, repair, replacement and
31 modification of common elements.

32 (g) May cause additional improvements to be made as a part of
33 the common elements.

34 (h) May acquire, hold, encumber and convey in its own name
35 any right, title or interest to real estate or personal property, but:

36 (1) Common elements in a condominium or planned
37 community may be conveyed or subjected to a security interest only
38 pursuant to NRS 116.3112; and

39 (2) Part of a cooperative may be conveyed, or all or part of a
40 cooperative may be subjected to a security interest, only pursuant to
41 NRS 116.3112.

42 (i) May grant easements, leases, licenses and concessions
43 through or over the common elements.

44 (j) May impose and receive any payments, fees or charges for
45 the use, rental or operation of the common elements, other than



1 limited common elements described in subsections 2 and 4 of
2 NRS 116.2102, and for services provided to the units' owners,
3 including, without limitation, any services provided pursuant to
4 NRS 116.310312.

5 (k) May impose charges for late payment of assessments
6 pursuant to NRS 116.3115.

7 (l) May impose construction penalties when authorized pursuant
8 to NRS 116.310305.

9 (m) May impose reasonable fines for violations of the governing
10 documents of the association only if the association complies with
11 the requirements set forth in NRS 116.31031.

12 (n) May impose reasonable charges for the preparation and
13 recordation of any amendments to the declaration or any statements
14 of unpaid assessments, and impose reasonable fees, not to exceed
15 the amounts authorized by NRS 116.4109, for preparing and
16 furnishing the documents and certificate required by that section.

17 (o) May provide for the indemnification of its officers and
18 executive board and maintain directors and officers liability
19 insurance.

20 (p) May assign its right to future income, including the right to
21 receive assessments for common expenses, but only to the extent the
22 declaration expressly so provides.

23 (q) May exercise any other powers conferred by the declaration
24 or bylaws.

25 (r) May exercise all other powers that may be exercised in this
26 State by legal entities of the same type as the association.

27 (s) May direct the removal of vehicles improperly parked on
28 property owned or leased by the association, as authorized pursuant
29 to NRS 487.038, or improperly parked on any road, street, alley or
30 other thoroughfare within the common-interest community in
31 violation of the governing documents. In addition to complying with
32 the requirements of NRS 487.038 and any requirements in the
33 governing documents, if a vehicle is improperly parked as described
34 in this paragraph, the association must post written notice in a
35 conspicuous place on the vehicle or provide oral or written notice to
36 the owner or operator of the vehicle at least 48 hours before the
37 association may direct the removal of the vehicle, unless the vehicle:

38 (1) Is blocking a fire hydrant, fire lane or parking space
39 designated for the handicapped; or

40 (2) Poses an imminent threat of causing a substantial adverse
41 effect on the health, safety or welfare of the units' owners or
42 residents of the common-interest community.

43 (t) May exercise any other powers necessary and proper for the
44 governance and operation of the association.



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1 2. The declaration may not limit the power of the association to
2 deal with the declarant if the limit is more restrictive than the limit
3 imposed on the power of the association to deal with other persons.

4 3. The executive board may determine whether to take
5 enforcement action by exercising the association's power to impose
6 sanctions or commence an action for a violation of the declaration,
7 bylaws or rules, including whether to compromise any claim for
8 unpaid assessments or other claim made by or against it. The
9 executive board does not have a duty to take enforcement action if it
10 determines that, under the facts and circumstances presented:

11 (a) The association's legal position does not justify taking any or
12 further enforcement action;

13 (b) The covenant, restriction or rule being enforced is, or is
14 likely to be construed as, inconsistent with current law;

15 (c) Although a violation may exist or may have occurred, it is
16 not so material as to be objectionable to a reasonable person or to
17 justify expending the association's resources; or

18 (d) It is not in the association's best interests to pursue an
19 enforcement action.

20 4. The executive board's decision under subsection 3 not to
21 pursue enforcement under one set of circumstances does not prevent
22 the executive board from taking enforcement action under another
23 set of circumstances, but the executive board may not be arbitrary or
24 capricious in taking enforcement action.

25 5. Notwithstanding any provision of this chapter or the
26 governing documents to the contrary, an association may not impose
27 any assessment pursuant to this chapter or the governing documents
28 on the owner of any property in the common-interest community
29 that is exempt from taxation pursuant to NRS 361.125. For the
30 purposes of this subsection, "assessment" does not include any
31 charge for any utility services, including, without limitation,
32 telecommunications, broadband communications, cable television,
33 electricity, natural gas, sewer services, garbage collection, water or
34 for any other service which is delivered to and used or consumed
35 directly by the property in the common-interest community that is
36 exempt from taxation pursuant to NRS 361.125.

37 **Sec. 21.** 1. Section 2 of this act applies only to residential
38 construction for which a contract is entered into on or after the
39 effective date of this act.

40 2. The provisions of NRS 40.615 and 40.655, as amended by
41 sections 6 and 15 of this act, apply to any claim that arises on or
42 after the effective date of this act.

43 3. The provisions of NRS 40.645, 40.650 and 40.695, as
44 amended by sections 8, 14 and 16 of this act, apply to a notice of a
45 constructional defect given on or after the effective date of this act.



1 4. The provisions of NRS 40.647, as amended by section 11 of
2 this act, apply only to an inspection conducted pursuant to NRS
3 40.6462, as amended by section 10 of this act, on or after the
4 effective date of this act.

5 5. Except as otherwise provided in subsection 6, the period of
6 limitations on actions set forth in NRS 11.202, as amended by
7 section 17 of this act, applies retroactively to actions in which the
8 substantial completion of the improvement to the real property
9 occurred before the effective date of this act.

10 6. The provisions of subsection 5 do not limit an action:

11 (a) That accrued before the effective date of this act, and was
12 commenced within 1 year after the effective date of this act; or

13 (b) If doing so would constitute an impairment of the obligation
14 of contracts under the Constitution of the United States or the
15 Constitution of the State of Nevada.

16 7. The provisions of NRS 116.3102, as amended by section 20
17 of this act, do not apply if a unit-owners' association has given
18 notice of a constructional defect pursuant to NRS 40.600 to 40.695,
19 inclusive, and sections 2 and 3 of this act on or before the effective
20 date of this act.

21 8. As used in this section:

22 (a) "Residential construction" means the construction of a new
23 residence, of an alteration of or addition to an existing residence, or
24 of an appurtenance.

25 (b) "Unit-owners' association" has the meaning ascribed to it in
26 NRS 116.011.

27 **Sec. 22.** NRS 11.203, 11.204, 11.205, 11.206 and 40.6452 are
28 hereby repealed.

29 **Sec. 23.** This act becomes effective upon passage and
30 approval.

LEADLINES OF REPEALED SECTIONS

**11.203 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Known deficiencies.**

**11.204 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Latent deficiencies.**

**11.205 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Patent deficiencies.**



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11.206 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Limitation of actions not a defense in actions based on liability as innkeeper or for defect in product.

40.6452 Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners.

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