

ASSEMBLY BILL NO. 442—COMMITTEE ON JUDICIARY

MARCH 10, 1999

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing civil actions involving constructional defects and deficiencies. (BDR 3-1065)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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 civil actions; revising the provisions governing certain actions involving constructional defects; revising the statutes of limitation and statutes of repose for certain actions involving constructional deficiencies; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 40 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 ***If, after complying with the procedural requirements of NRS 40.645***
4 ***and 40.680, a claimant commences an action for damages arising from a***
5 ***constructional defect:***
6 ***1. The claimant and each contractor who is named in the original***
7 ***complaint when the action is commenced are not required, while the***
8 ***action is pending, to comply with the requirements of NRS 40.645 or***
9 ***40.680 for any constructional defect that the claimant includes in an***
10 ***amended complaint, if the constructional defect:***
11 ***(a) Is attributable, in whole or in part, to such a contractor;***
12 ***(b) Is located on the same property described in the original***
13 ***complaint; and***
14 ***(c) Could not have been discovered through reasonable inspection***
15 ***before the action was commenced.***

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

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

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

10 **Sec. 2.** NRS 40.600 is hereby amended to read as follows:

11 40.600 As used in NRS 40.600 to 40.695, inclusive, **and section 1 of**
12 **this act**, unless the context otherwise requires, the words and terms defined
13 in NRS 40.605 to 40.630, inclusive, have the meanings ascribed to them in
14 those sections.

15 **Sec. 3.** NRS 40.645 is hereby amended to read as follows:

16 40.645 Except as otherwise provided in this section, **section 1 of this**
17 **act** and NRS 40.670:

18 1. At least 60 days before a claimant commences an action, **including,**
19 **but not limited to, a proposed class action**, against a contractor for
20 damages arising from a constructional defect, the claimant must give
21 written notice by certified mail, return receipt requested, to the contractor,
22 at the contractor's last known address, specifying in reasonable detail the
23 defects or any damages or injuries to each residence or each unit within a
24 multiple-unit residence that is the subject of the claim. The notice must
25 describe in reasonable detail the cause of the defects if the cause is known,
26 and the nature and extent that is known of the damage or injury resulting
27 from the defects. In a complex matter, an expert opinion concerning the
28 cause of the defects and the nature and extent of the damage or injury
29 resulting from the defects based on a representative sample of the
30 residences or of the units of each multiple-unit residence involved in the
31 action satisfies the requirements of this section. During the 35-day period
32 after the contractor receives the notice, on his written request, the
33 contractor is entitled to inspect the property that is the subject of the claim
34 to determine the nature and cause of the defect, damage or injury and the
35 nature and extent of repairs necessary to remedy the defect. The contractor
36 shall, before making the inspection, provide reasonable notice of the
37 inspection and must make the inspection at a reasonable time. The
38 contractor may take reasonable steps to establish the existence of the
39 defect. **If a contractor does not inspect a residence pursuant to this**
40 **subsection during the 35-day period, the contractor shall be deemed to**

1 *have waived any right to inspect the residence after the end of the 35-day*
2 *period, unless the contractor makes or provides for repairs to the*
3 *residence pursuant to any other provision of NRS 40.600 to 40.695,*
4 *inclusive.*

5 2. If the residence is covered by a homeowner's warranty, a claimant
6 must diligently pursue a claim under the warranty or contract.

7 3. Within 45 days after the contractor receives the notice, the
8 contractor ~~{may make}~~ *shall provide the claimant with* a written *response*
9 *that contains an* offer of settlement ~~{to the claimant. The offer:}~~ *or a*
10 *denial of liability, as appropriate, for each constructional defect set forth*
11 *in the claimant's notice. The written response:*

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

14 (b) Must respond to each constructional defect set forth in the
15 claimant's notice. ~~{, and}~~

16 (c) *Must* describe in reasonable detail the cause of ~~{the}~~ *each* defect, if
17 known, the nature and extent of the damage or injury resulting from ~~{the~~
18 ~~defect, and, unless the offer is limited to a proposal for monetary~~
19 ~~compensation,}~~ *each defect and* the method, adequacy and estimated cost
20 of ~~{the proposed repair.~~

21 ~~—(c) May include:}~~ *repairing each defect.*

22 (d) *Must include for each denial of liability, if any, a statement of all*
23 *grounds for the denial.*

24 (e) *Must include for each offer of settlement, if any, one or more of*
25 *the following:*

26 (1) A proposal for monetary compensation.

27 (2) If the contractor is licensed to make the repairs, an agreement by
28 the contractor to make the repairs.

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

32 The repairs must be made within 45 days after the contractor receives
33 written notice of acceptance of the offer, unless completion is delayed by
34 the claimant or by other events beyond the control of the contractor. The
35 claimant and the contractor may agree in writing to extend the periods
36 prescribed by this section.

37 4. The periods provided in subsections 1 and 3 must be extended by 60
38 days if the claim is a complex matter. The parties may stipulate to a further
39 extension.

40 5. Not later than ~~{15 days before the mediation required pursuant to~~
41 ~~NRS 40.680 and upon providing 15 days' notice, each}~~ *21 days after*
42 *receiving written notice from the other party, a* party shall provide the

43 other party, or shall make a reasonable effort to assist the other party to

1 obtain, all relevant reports, photos, correspondence, plans, specifications,
2 warranties, contracts, subcontracts, work orders for repair, videotapes and
3 soil and other engineering reports that are not privileged. *Whether or not*
4 *the claimant has commenced an action, if either party fails to comply*
5 *with the provisions of this subsection, the other party may petition the*
6 *court that has or would have jurisdiction over such an action to compel*
7 *compliance with the provisions of this subsection. The court shall award*
8 *the prevailing party in such a proceeding any reasonable attorney's fees*
9 *and costs incurred by the party in bringing or defending against the*
10 *petition.*

11 6. If the claimant is a representative of a homeowner's association, the
12 association shall submit any offer of settlement made by the contractor to
13 each member of the association.

14 **Sec. 4.** NRS 40.650 is hereby amended to read as follows:

15 40.650 1. If a claimant unreasonably rejects a reasonable written
16 offer of settlement made pursuant to NRS 40.645 or does not permit the
17 contractor or independent contractor a reasonable opportunity to repair the
18 defect pursuant to an accepted offer of settlement and thereafter
19 commences an action governed by NRS 40.600 to 40.695, inclusive, the
20 court in which the action is commenced may:

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

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

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

26 2. If a contractor fails to:

27 (a) Make *, in good faith,* an offer of settlement ~~;~~

28 ~~—(b) Make a good faith response to the claim asserting no liability;~~

29 ~~—(c) or a denial of liability in accordance with the provisions of NRS~~
30 ~~40.645;~~

31 (b) Complete, in a good and workmanlike manner, the repairs specified
32 in an accepted offer;

33 ~~[(d)] (c)~~ Agree to a mediator or accept the appointment of a mediator
34 pursuant to NRS 40.680; ~~for~~

35 ~~—(e)] (d)~~ Participate *, in good faith,* in mediation ~~[(d)] ; or~~

36 (e) *Provide or disclose to the claimant any documentation or*
37 *information required by the provisions of subsection 5 of NRS 40.645 or*
38 *subsection 2 of NRS 40.687 or otherwise fails to comply with those*
39 *provisions,*

40 the limitations on damages and defenses to liability provided in NRS
41 40.600 to 40.695, inclusive, do not apply and the claimant may commence
42 an action without satisfying any other requirement of NRS 40.600 to
43 40.695,

inclusive.

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

5 **Sec. 5.** NRS 40.655 is hereby amended to read as follows:

6 40.655 1. Except as otherwise provided in NRS 40.650 ~~{,}~~ **and**
7 **40.670**, in a claim governed by NRS 40.600 to 40.695, inclusive, the
8 claimant may recover only the following damages to the extent
9 proximately caused by a constructional defect:

10 (a) Any reasonable attorney's fees;

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

15 (c) The reduction in market value of the residence or accessory
16 structure, if any, to the extent the reduction is because of ~~{structural~~
17 ~~failure;}~~ **the constructional defect;**

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

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

21 (f) ***If the constructional defect renders the residence uninhabitable,***
22 ***reasonable compensation for emotional distress;***

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

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

27 (2) Evaluate appropriate corrective measures ~~{to}~~ **and** estimate the
28 ~~{value of loss of use;}~~ **cost of repairs;** and

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

31 ~~{(g)}~~ (h) Any interest provided by statute.

32 2. The ***court shall determine the*** amount of any attorney's fees
33 awarded pursuant to this section . ~~{must be approved by the court.}~~

34 3. If a contractor complies with the provisions of NRS 40.600 to
35 40.695, inclusive, the claimant may not recover from the contractor, as a
36 result of the constructional defect, anything other than that which is
37 provided pursuant to NRS 40.600 to 40.695, inclusive.

38 ~~{4.—As used in this section, “structural failure” means physical damage~~
39 ~~to the load-bearing portion of a residence or appurtenance caused by a~~
40 ~~failure of the load-bearing portion of the residence or appurtenance.}~~

Sec. 6. NRS 40.665 is hereby amended to read as follows:

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

~~(1.)~~ **(a)** The market value of the residence as if no constructional defect existed, except that if a residence is less than 2 years of age and was purchased from the contractor against whom the claim is brought, the market value is the price at which the residence was sold to the claimant;

~~(2.)~~ **(b)** The value of any improvements made to the property by a person other than the contractor;

~~(3.)~~ **(c)** Reasonable attorney's fees and fees for experts; and

~~(4.)~~ **(d)** Any costs, including costs and expenses for moving and costs, points and fees for loans.

~~{Any}~~

2. *Except as otherwise provided in subsection 3, any offer of settlement made that includes the items listed in ~~{this section}~~ subsection 1 shall be deemed reasonable for the purposes of subsection 1 of NRS 40.650.*

3. *Any offer of settlement made that includes the items listed in subsection 1 shall be deemed not reasonable for the purposes of subsection 1 of NRS 40.650 if the claimant reasonably demonstrates that he has been unable to finance or otherwise purchase another residence that has a market value equal to the market value of the claimant's residence as if no constructional defect had existed.*

Sec. 7. NRS 40.670 is hereby amended to read as follows:

40.670 **1.** A contractor who receives written notice of a constructional defect resulting from work performed by the contractor or his agent, employee or subcontractor which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor shall not cure the defect by making any repairs for which he is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. ~~{ff}~~

2. *Except as otherwise provided in subsection 3, if the contractor fails to cure the defect in a reasonable time ~~{, the}~~ :*

(a) *The owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law ~~{-~~*

~~**2.** A contractor who~~

;

1 *(b) The limitations on damages and defenses to liability provided in*
2 *NRS 40.600 to 40.695, inclusive, do not apply to the defect and the*
3 *claimant may commence an action for damages arising from the defect*
4 *without satisfying any of the requirements of NRS 40.600 to 40.695,*
5 *inclusive; and*

6 *(c) Evidence of the written notice to the contractor and the failure of*
7 *the contractor to cure the defect in a reasonable time is admissible in any*
8 *such action.*

9 *3. If a contractor* does not cure a defect pursuant to this section
10 because he has determined, in good faith and after a reasonable inspection,
11 that there is not an imminent threat to the health or safety of the inhabitants
12 *, the contractor* is not liable for attorney's fees and costs ~~ipursuant to this~~
13 ~~section, except that if~~ *in any action for damages arising from the defect*
14 *unless* a building inspector employed by a governmental body with
15 jurisdiction certifies that there ~~is~~ *was* an imminent threat to the health and
16 safety of the inhabitants of the residence . ~~the contractor is subject to the~~
17 ~~provisions of subsection 1.~~

18 **Sec. 8.** Chapter 11 of NRS is hereby amended by adding thereto the
19 provisions set forth as sections 9 and 10 of this act.

20 **Sec. 9. 1.** *Except as otherwise provided in subsection 2, for the*
21 *purposes of this section and NRS 11.202 to 11.206, inclusive, the date of*
22 *substantial completion of an improvement to real property shall be*
23 *deemed to be the date on which:*

24 *(a) The final building inspection of the improvement is conducted;*
25 *(b) A notice of completion is issued for the improvement; or*
26 *(c) A certificate of occupancy is issued for the improvement,*
27 *whichever occurs later.*

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

31 **Sec. 10. 1.** *In any action which is described in NRS 11.203, 11.204*
32 *or 11.205 and which is commenced against a person who performed or*
33 *furnished the design, planning, supervision or observation of*
34 *construction of, or the construction of, an improvement to real property*
35 *that is part of a common interest community, the applicable period of*
36 *repose set forth in NRS 11.203, 11.204 or 11.205 must be tolled during*
37 *any period in which the person:*

38 *(a) Owned or otherwise controlled the improvement or the common*
39 *interest community; or*

40 *(b) Performed or furnished repairs to the improvement, or promised to*
41 *perform or furnish such repairs but failed to do so, whether or not the*
42 *person owned or otherwise controlled the improvement or the common*
43 *interest community at the time.*

1 **2. As used in this section, “common interest community” means any**
2 **real property that is subject to any provision of chapter 116 or 117 of**
3 **NRS.**

4 **Sec. 11.** NRS 11.202 is hereby amended to read as follows:

5 11.202 1. An action may be commenced against the owner, occupier
6 or any person performing or furnishing the design, planning, supervision
7 or observation of construction ~~to~~ **of**, or the construction of , an
8 improvement to real property at any time after the substantial completion
9 of such an improvement, for the recovery of damages for:

10 (a) Any deficiency in the design, planning, supervision or observation
11 of construction **of**, or the construction of , such an improvement which is
12 the result of his willful misconduct or which he fraudulently concealed;

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

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

16 2. The provisions of this section do not apply in an action brought
17 against:

18 (a) The owner or keeper of any hotel, inn, motel, motor court,
19 boardinghouse or lodginghouse in this state on account of his liability as an
20 innkeeper.

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

22 **Sec. 12.** NRS 11.203 is hereby amended to read as follows:

23 11.203 1. Except as otherwise provided in **this section**, NRS
24 ~~11.202,~~ **11.206 and section 10 of this act**, no action may be commenced
25 against the owner, occupier or any person performing or furnishing the
26 design, planning, supervision or observation of construction ~~to~~ **of**, or the
27 construction of , an improvement to real property more than 10 years after
28 the substantial completion of such an improvement, for the recovery of
29 damages for:

30 (a) Any deficiency in the design, planning, supervision or observation
31 of construction **of**, or the construction of , such an improvement which is
32 known or through the use of reasonable diligence should have been known
33 to him;

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

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

37 2. ~~{Notwithstanding the provisions of NRS 11.190 and subsection 1 of~~
38 ~~this section, where}~~ **If an** injury occurs in the ~~{tenth}~~ **10th** year after the
39 substantial completion of such an improvement, an action for damages for
40 injury to property or person, damages for wrongful death resulting from

1 such injury or damages for breach of contract may be commenced within 2
2 years after the date of such injury, irrespective of the date of death, but in
3 no event may an action be commenced more than 12 years after the
4 substantial completion of the improvement.

5 **3. If the provisions of this section apply to an action:**

6 **(a) The action is subject only to the period of repose set forth in this**
7 **section; and**

8 **(b) No other period of limitation or repose set forth in this chapter**
9 **applies to the action.**

10 **4. The provisions of this section do not apply to:**

11 **(a) An action that is based upon any deficiency described in**
12 **subsection 1 if the provisions of NRS 11.202 otherwise apply to the**
13 **deficiency; or**

14 **(b) A claim for indemnity or contribution.**

15 **Sec. 13.** NRS 11.204 is hereby amended to read as follows:

16 11.204 1. Except as otherwise provided in **this section**, NRS ~~11.202~~
17 ~~and 11.203,~~ **11.206 and section 10 of this act**, no action may be
18 commenced against the owner, occupier or any person performing or
19 furnishing the design, planning, supervision or observation of construction
20 ~~of~~ **of**, or the construction ~~of~~ **of**, an improvement to real property more
21 than 8 years after the substantial completion of such an improvement, for
22 the recovery of damages for:

23 (a) Any latent deficiency in the design, planning, supervision or
24 observation of construction **of**, or the construction of **of**, such an
25 improvement;

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

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

29 2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of~~
30 ~~this section, where] If an~~ injury occurs in the eighth year after the
31 substantial completion of such an improvement, an action for damages for
32 injury to property or person, damages for wrongful death resulting from
33 such injury or damages for breach of contract may be commenced within 2
34 years after the date of such injury, irrespective of the date of death, but in
35 no event may an action be commenced more than 10 years after the
36 substantial completion of the improvement.

37 **3. If the provisions of this section apply to an action:**

38 **(a) The action is subject only to the period of repose set forth in this**
39 **section; and**

40 **(b) No other period of limitation or repose set forth in this chapter**
41 **applies to the action.**

1 **4. The provisions of this section do not apply to:**

2 **(a) An action that is based upon any latent deficiency described in**
3 **subsection 1 if the provisions of NRS 11.202 or 11.203 otherwise apply to**
4 **the latent deficiency; or**

5 **(b) A claim for indemnity or contribution.**

6 **5.** For the purposes of this section, “latent deficiency” means a
7 deficiency which is not apparent by reasonable inspection.

8 **Sec. 14.** NRS 11.205 is hereby amended to read as follows:

9 11.205 1. Except as otherwise provided in **this section**, NRS ~~11.202~~
10 ~~and 11.203,~~ **11.206 and section 10 of this act**, no action may be
11 commenced against the owner, occupier or any person performing or
12 furnishing the design, planning, supervision or observation of construction
13 ~~of~~, or the construction of , an improvement to real property more than 6
14 years after the substantial completion of such an improvement, for the
15 recovery of damages for:

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

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

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

21 2. ~~[Notwithstanding the provisions of NRS 11.190 and subsection 1 of~~
22 ~~this section, where] If an~~ injury occurs in the sixth year after the
23 substantial completion of such an improvement, an action for damages for
24 injury to property or person, damages for wrongful death resulting from
25 such injury or damages for breach of contract may be commenced within 2
26 years after the date of such injury, irrespective of the date of death, but in
27 no event may an action be commenced more than 8 years after the
28 substantial completion of the improvement.

29 **3. If the provisions of this section apply to an action:**

30 **(a) The action is subject only to the period of repose set forth in this**
31 **section; and**

32 **(b) No other period of limitation or repose set forth in this chapter**
33 **applies to the action.**

34 **4. The provisions of this section do not apply to:**

35 **(a) An action that is based upon any patent deficiency described in**
36 **subsection 1 if the provisions of NRS 11.202 or 11.203 otherwise apply to**
37 **the patent deficiency; or**

38 **(b) A claim for indemnity or contribution.**

39 **5.** For the purposes of this section, “patent deficiency” means a
40 deficiency which is apparent by reasonable inspection.

1 **Sec. 15.** NRS 11.206 is hereby amended to read as follows:

2 11.206 The ~~limitations respectively prescribed by~~ *periods of repose*
3 *set forth in* NRS 11.203, 11.204 and 11.205 are not a defense in an action
4 brought against:

5 1. The owner or keeper of any hotel, inn, motel, motor court,
6 boardinghouse or lodginghouse in this state on account of his liability as an
7 innkeeper.

8 2. Any person on account of a defect in a product.

9 **Sec. 16.** 1. The amendatory provisions of sections 1 to 11, inclusive,
10 and 15 of this act do not apply to an action that was commenced before
11 October 1, 1999.

12 2. The amendatory provisions of sections 12, 13 and 14 of this act do
13 not apply to an action if any period of limitation set forth in chapter 11 of
14 NRS that was applicable to the action, other than a period of repose set
15 forth in NRS 11.203, 11.204 or 11.205, commenced to run before October
16 1, 1999.

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