

ASSEMBLY BILL NO. 482—ASSEMBLYMEN ANDERSON, MANENDO, LESLIE,
PARKS, FREEMAN, COLLINS, CLABORN, MCCLAIN, KOIVISTO,
OHRENSCHALL AND CARPENTER

MARCH 11, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing actions resulting from
constructional defects. (BDR 3-1115)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

~

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

AN ACT relating to actions concerning property; requiring a contractor to cure a defect in certain
homes within a certain period after receiving notice of the defect; eliminating the
limitation on the liability of a contractor for constructional defects under certain
circumstances; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 40 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 ***1. Except as otherwise provided in NRS 40.670, a contractor who***
4 ***receives written notice of a constructional defect resulting from work***
5 ***performed by the contractor or his agent, employee or subcontractor on a***
6 ***residence or appurtenance on which construction was completed less***
7 ***than 1 year before the date the contractor received the notice shall cure***
8 ***the defect within 45 days after receiving the notice.***
9 ***2. The contractor shall not cure the defect by:***
10 ***(a) Making repairs for which the contractor is not licensed; or***
11 ***(b) Causing repairs to be made by a person who is not licensed to***
12 ***make the repairs.***
13 ***3. If the contractor fails to cure the defect within 45 days after***
14 ***receiving notice of the defect, the owner of the residence or appurtenance***
15 ***may:***

1 (a) *Have the defect cured; and*

2 (b) *Recover from the contractor:*

3 (1) *The reasonable cost of the repairs;*

4 (2) *Reasonable attorney's fees and costs; and*

5 (3) *Any other damages recoverable pursuant to any other law.*

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

7 40.600 As used in NRS 40.600 to 40.695, inclusive, *and section 1 of*
8 *this act*, unless the context otherwise requires, the words and terms defined
9 in NRS 40.605 to 40.630, inclusive, have the meanings ascribed to them in
10 those sections.

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

12 40.645 Except as otherwise provided in this section and NRS 40.670

13 ~~(b)~~ *and section 1 of this act:*

14 1. At least 60 days before a claimant commences an action against a
15 contractor for damages arising from a constructional defect, the claimant
16 must give written notice by certified mail, return receipt requested, to the
17 contractor, at the contractor's last known address, specifying in reasonable
18 detail the defects or any damages or injuries to each residence or each unit
19 within a multiple-unit residence that is the subject of the claim. The notice
20 must describe in reasonable detail the cause of the defects if the cause is
21 known, and the nature and extent that is known of the damage or injury
22 resulting from the defects. In a complex matter, an expert opinion
23 concerning the cause of the defects and the nature and extent of the
24 damage or injury resulting from the defects based on a representative
25 sample of the residences or of the units of each multiple-unit residence
26 involved in the action satisfies the requirements of this section. During the
27 35-day period after the contractor receives the notice, on his written
28 request, the contractor is entitled to inspect the property that is the subject
29 of the claim to determine the nature and cause of the defect, damage or
30 injury and the nature and extent of repairs necessary to remedy the defect.
31 The contractor shall, before making the inspection, provide reasonable
32 notice of the inspection and must make the inspection at a reasonable time.
33 The contractor may take reasonable steps to establish the existence of the
34 defect.

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

37 3. Within 45 days after the contractor receives the notice, the
38 contractor may make a written offer of settlement to the claimant. The
39 offer:

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

(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the defect, if known, the nature and extent of the damage or injury resulting from the defect, and, unless the offer is limited to a proposal for monetary compensation, the method, adequacy and estimated cost of the proposed repair.

(c) May include:

(1) A proposal for monetary compensation.

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

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

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

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

5. Not later than 15 days before the mediation required pursuant to NRS 40.680 and upon providing 15 days' notice, each party shall provide the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes and soil and other engineering reports that are not privileged.

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

Sec. 4. NRS 40.655 is hereby amended to read as follows:

40.655 1. Except as otherwise provided in **subsection 4 and** NRS 40.650 **and section 1 of this act**, in a claim governed by NRS 40.600 to 40.695, inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) Any reasonable attorney's fees;

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

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

- 1 (d) The loss of the use of all or any part of the residence;
2 (e) The reasonable value of any other property damaged by the
3 constructional defect;
4 (f) Any additional costs reasonably incurred by the claimant, including,
5 but not limited to, any costs and fees incurred for the retention of experts
6 to:
7 (1) Ascertain the nature and extent of the constructional defects;
8 (2) Evaluate appropriate corrective measures to estimate the value of
9 loss of use; and
10 (3) Estimate the value of loss of use, the cost of temporary housing
11 and the reduction of market value of the residence; and
12 (g) Any interest provided by statute.
13 2. The amount of any attorney's fees awarded pursuant to this section
14 must be approved by the court.
15 3. If a contractor complies with the provisions of NRS 40.600 to
16 40.695, inclusive, the claimant may not recover from the contractor, as a
17 result of the constructional defect, anything other than that which is
18 provided pursuant to NRS 40.600 to 40.695, inclusive.
19 4. *The provisions of this section apply only if:*
20 *(a) The construction of the residence or appurtenance was directly*
21 *supervised by a general contractor licensed in this state; and*
22 *(b) The repairs performed to cure a constructional defect were*
23 *supervised by a person who had knowledge of the building codes that*
24 *were applicable to the residence or appurtenance.*
25 5. As used in this section, "structural failure" means physical damage
26 to the load-bearing portion of a residence or appurtenance caused by a
27 failure of the load-bearing portion of the residence or appurtenance.
28 **Sec. 5.** The amendatory provisions of this act apply to a constructional
29 defect specified in section 1 of this act for which written notice is given on
30 or after October 1, 1999.