

ASSEMBLY BILL NO. 87—COMMITTEE ON JUDICIARY

(ON BEHALF OF CITY OF LAS VEGAS)

FEBRUARY 4, 1999

Referred to Committee on Judiciary

SUMMARY—Amends provisions governing civil liability of certain persons and entities.
(BDR 3-611)

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 ~~for omitted material~~ is material to be omitted.

AN ACT relating to civil liability requiring that certain money recovered in an action for constructional defects be placed in a court-administered escrow; requiring that notice of the defects be recorded at office of county recorder; amending the provisions governing the liability of this state and its political subdivisions relating to inspections of buildings, structures, facilities or improvements; 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.** NRS 40.645 is hereby amended to read as follows:
- 2 40.645 Except as otherwise provided in this section and NRS 40.670:
- 3 1. At least 60 days before a claimant commences an action against a
- 4 contractor for damages arising from a constructional defect, the claimant
- 5 must ~~give~~ :
- 6 ***(a) Provide*** written notice by certified mail, return receipt requested, to
- 7 the contractor, at the contractor's last known address, specifying in
- 8 reasonable detail the defects or any damages or injuries to each residence
- 9 or each unit within a multiple-unit residence that is the subject of the claim.
- 10 The notice must describe in reasonable detail the cause of the defects if the
- 11 cause is known, and the nature and extent that is known of the damage or
- 12 injury resulting from the defects. In a complex matter, an expert opinion
- 13 concerning the cause of the defects and the nature and extent of the
- 14 damage or injury resulting from the defects based on a representative

1 sample of the residences or of the units of each multiple-unit residence
2 involved in the action satisfies the requirements of this ~~section.~~
3 *paragraph.* During the 35-day period after the contractor receives the
4 notice, on his written request, the contractor is entitled to inspect the
5 property that is the subject of the claim to determine the nature and cause
6 of the defect, damage or injury and the nature and extent of repairs
7 necessary to remedy the defect. The contractor shall, before making the
8 inspection, provide reasonable notice of the inspection and must make the
9 inspection at a reasonable time. The contractor may take reasonable steps
10 to establish the existence of the defect.

11 *(b) Record at the office of the county recorder in the county in which*
12 *the property is situated a copy of the notice required pursuant to*
13 *paragraph (a).*

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

16 3. Within 45 days after the contractor receives the notice, the
17 contractor may make a written offer of settlement to the claimant. The
18 offer:

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

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

27 (c) May include:

28 (1) A proposal for monetary compensation.

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

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

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

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

42 5. Not later than 15 days before the mediation required pursuant to
43 NRS 40.680 and upon providing 15 days' notice, each party shall provide

1 the other party, or shall make a reasonable effort to assist the other party to
2 obtain, all relevant reports, photos, correspondence, plans, specifications,
3 warranties, contracts, subcontracts, work orders for repair, videotapes and
4 soil and other engineering reports that are not privileged.

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

8 **Sec. 2.** NRS 40.655 is hereby amended to read as follows:

9 40.655 1. Except as otherwise provided in NRS 40.650, in a claim
10 governed by NRS 40.600 to 40.695, inclusive, the claimant may recover
11 only the following damages to the extent proximately caused by a
12 constructional defect:

13 (a) Any reasonable attorney's fees;

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

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

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

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

23 (f) 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 estimate the value of
28 loss of use; 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) Any interest provided by statute.

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

34 3. *Money that a claimant recovers for the reasonable cost of any*
35 *repairs already made that were necessary and of any repairs yet to be*
36 *made that are necessary to cure any constructional defect that the*
37 *contractor failed to cure:*

38 (a) *Must be placed in an escrow that is administered by the court; and*

39 (b) *May be disbursed only to pay for the repair of the defect.*

40 4. If a contractor complies with the provisions of NRS 40.600 to
41 40.695, inclusive, the claimant may not recover from the contractor, as a
42 result of the constructional defect, anything other than that which is
43 provided pursuant to NRS 40.600 to 40.695, inclusive.

1 ~~[4.]~~ 5. As used in this section, “structural failure” means physical
2 damage to the load-bearing portion of a residence or appurtenance caused
3 by a failure of the load-bearing portion of the residence or appurtenance.

4 **Sec. 3.** NRS 41.033 is hereby amended to read as follows:

5 41.033 1. No action may be brought under NRS 41.031 or against an
6 officer or employee of the state or any of its agencies or political
7 subdivisions which is based upon:

8 (a) Failure to inspect any building, structure, vehicle, street, public
9 highway or other public work, facility or improvement to determine any
10 hazards, deficiencies or other matters, whether or not there is a duty to
11 inspect; or

12 (b) Failure to discover *or to act reasonably after discovering* such a
13 hazard, deficiency or other matter, whether or not an inspection is made.

14 2. An inspection conducted with regard to a private building, structure,
15 facility or improvement constitutes a public duty and does not warrant or
16 ensure the absence of any hazard, deficiency or other matter.

17 **Sec. 4.** The amendatory provisions of this act apply to an action
18 brought on or after the effective date of this act.

19 **Sec. 5.** This act becomes effective upon passage and approval.