

ASSEMBLY BILL NO. 133—ASSEMBLYMAN DINI

FEBRUARY 14, 2001

Referred to Committee on Judiciary

SUMMARY—Revises various provisions regarding claims against contractors for constructional defects and against design professionals for professional negligence. (BDR 3-667)

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 real property; creating a rebuttable presumption concerning construction performed in substantial compliance with applicable building codes; requiring a claimant to provide notice of a claim to parties with an interest of record in certain real property; authorizing a contractor or subcontractor to repair certain constructional defects in complex matters; requiring an affidavit in support of an action for professional negligence against a design professional; revising various provisions governing claims against a contractor for constructional defects; 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
2 the provisions set forth as sections 2 to 7, inclusive, of this act.
3 **Sec. 2.** *“Building code” means ordinances, plans, regulations or*
4 *rulings adopted by a governmental body to regulate and specify the*
5 *soundness of construction of structures.*
6 **Sec. 3.** *1. Approval of the design, construction, alteration, repair*
7 *or improvement of a residence or appurtenance by a building inspector*
8 *employed by a governmental body with jurisdiction creates a rebuttable*
9 *presumption that the residence or appurtenance was designed,*
10 *constructed, altered, repaired or improved in compliance with the*
11 *applicable building code in effect at the time the building permit for the*
12 *design, construction, alteration, repair or improvement of the residence*
13 *or appurtenance was issued.*
14 *2. The provisions of this section do not preclude a claimant from*
15 *bringing a claim or action based on a claim governed by NRS 40.600 to*
16 *40.695, inclusive, and sections 2 to 7, inclusive, of this act when:*



1 (a) A contractor has failed to comply with the requirements of a
2 building code relating to fire safety; or

3 (b) A building inspector employed by a governmental body with
4 jurisdiction certifies that there is an imminent threat to the health and
5 safety of the inhabitants of a residence.

6 **Sec. 4.** 1. A claimant who provides written notice of defects to a
7 contractor pursuant to NRS 40.645, other than for a defect described in
8 NRS 40.670, shall, at the time that the notice is given, forward a copy of
9 the notice by certified mail, return receipt requested, to each person who
10 has an interest of record in the residence or appurtenance that is the
11 subject of the notice.

12 2. A claimant who commences an action against a contractor
13 pursuant to NRS 40.682 shall, at the time that he serves the complaint
14 and written notice of defects upon the contractor, forward a copy of the
15 complaint and notice by certified mail, return receipt requested, to each
16 person with an interest of record in the residence or appurtenance that is
17 the subject of the complaint and notice.

18 3. A claimant shall, at the time of providing the written notice of
19 defects pursuant to NRS 40.645 or at the time of serving the complaint
20 and the written notice of defects pursuant to NRS 40.682, file a notice of
21 the pendency of the action in the manner provided in NRS 14.010.

22 4. Before a claimant may use any amount of money received from a
23 final judgment, order, settlement, award, compromise or otherwise, in an
24 action brought pursuant to NRS 40.600 to 40.695, inclusive, and sections
25 2 to 7, inclusive, of this act, the claimant shall provide written notice to
26 each person who has an interest of record in the residence or
27 appurtenance that was the subject of the claim. The notice must include
28 any amount of damages received in a final judgment, order, settlement,
29 award, compromise or otherwise, and the proposed distribution of the
30 amount received.

31 5. If, after agreeing to make repairs or cause the repairs to be made
32 pursuant to this section, a contractor fails to complete the repairs
33 specified in the agreement in a good and workmanlike manner or in
34 substantial compliance with applicable building codes, the claimant may
35 commence an action against the contractor for damages arising from a
36 constructional defect without satisfying any other requirement of NRS
37 40.600 to 40.695, inclusive, and sections 2 to 7, inclusive, of this act.

38 **Sec. 5.** 1. If an action is commenced in a complex matter, the
39 contractor may respond to a notice provided to him by the claimant
40 pursuant to paragraph (b) of subsection 1 of NRS 40.682. The response
41 may include:

42 (a) If the contractor or his subcontractor is licensed to make the
43 repairs, an agreement by the contractor or subcontractor to make the
44 repairs.

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

48 2. If a contractor provides the claimant with a response pursuant to
49 paragraph (a) or (b) of subsection 1, the claimant shall, upon reasonable



1 *notice from the contractor, allow the contractor reasonable access to the*
2 *residence or appurtenance to make repairs or cause the repairs to be*
3 *made. The contractor shall:*
4 *(a) Complete such repairs within 90 days after the date the response is*
5 *served to the claimant, subject to reasonable extensions agreed upon in*
6 *writing by the claimant and the contractor if completion is delayed by the*
7 *claimant or by other events beyond the control of the contractor or*
8 *subcontractor, or timely completion of repairs is not reasonably possible;*
9 *(b) Warrant to the claimant that the repairs will be completed in a*
10 *good and workmanlike manner; and*
11 *(c) Complete the repairs in substantial compliance with applicable*
12 *building codes.*
13 *3. If a claimant prevents a contractor or subcontractor from making*
14 *repairs pursuant to this section, the claimant may not recover damages:*
15 *(a) Associated with the defect that the contractor or subcontractor was*
16 *prevented from repairing; or*
17 *(b) For damage to other parts of the residence or appurtenance that is*
18 *the proximate result of the refusal of the claimant to allow a contractor*
19 *or subcontractor to make repairs pursuant to this section.*
20 *Sec. 6. 1. Except as otherwise provided in subsection 2, in an*
21 *action for the professional negligence of a design professional or of a*
22 *partnership, corporation, limited-liability company or other form of*
23 *business organization or association that employed a design professional*
24 *at the times relevant to the action, including, without limitation, an*
25 *action filed pursuant to NRS 40.600 to 40.695, inclusive, and sections 2*
26 *to 7, inclusive, of this act, concurrently with the service of the first*
27 *pleading in an action, the attorney for the complainant shall:*
28 *(a) File an affidavit with the court stating that the attorney:*
29 *(1) Has reviewed the facts of the case;*
30 *(2) Has consulted with a design professional who practices in this*
31 *state or who teaches at an accredited college or university in this state in*
32 *a discipline relevant to the action and naming the design professional*
33 *consulted;*
34 *(3) Reasonably believes the design professional who was consulted*
35 *is knowledgeable in the relevant discipline involved in the action; and*
36 *(4) Has concluded on the basis of his review and the consultation*
37 *with the design professional that the action has a reasonable basis in law*
38 *and fact; or*
39 *(b) File an affidavit with the court stating that:*
40 *(1) The attorney has consulted with at least five design*
41 *professionals who practice in this state in a discipline relevant to the*
42 *action and naming the design professionals consulted; and*
43 *(2) None of those design professionals will certify that there is a*
44 *reasonable basis for commencing the action.*
45 *2. The attorney for the complainant may file the affidavit required*
46 *pursuant to subsection 1 at a later time if he could not consult with a*
47 *design professional and prepare the affidavit before filing the action*
48 *without causing the action to be impaired or barred by the statute of*
49 *limitations or repose. If the attorney must submit the affidavit late, he*



1 shall file an affidavit concurrently with the service of the first pleading in
2 the action stating his reason for failing to comply with subsection 1 and
3 the attorney shall consult with a design professional and file the affidavit
4 required pursuant to subsection 1 not later than 45 days after filing the
5 action.

6 3. In addition to the statement included in the affidavit pursuant to
7 paragraph (a) of subsection 1, a report must be attached to the affidavit.
8 The report must be prepared by the design professional consulted by the
9 attorney and include, without limitation:

10 (a) The resumé of the design professional;

11 (b) A statement that the design professional is licensed or registered in
12 this state and is experienced in each discipline which is the subject of the
13 report;

14 (c) A copy of each nonprivileged document reviewed by the design
15 professional in preparing his report, including, without limitation, each
16 record, report and related document that the design professional has
17 determined is relevant to the allegations of negligent conduct that are the
18 basis for the action;

19 (d) The conclusions of the design professional and the basis for the
20 conclusions; and

21 (e) A statement that the design professional has concluded that there
22 is a reasonable basis for filing the action.

23 4. A complainant whose attorney files an affidavit pursuant to
24 paragraph (b) of subsection 1 who does not prevail in the action is liable
25 for the reasonable attorney's fees and costs of the design professional or
26 the partnership, corporation, limited-liability company or other form of
27 business organization or association that employed the design
28 professional against whom the action was brought from the time of the
29 filing of the statement.

30 5. A design professional consulted by an attorney to prepare an
31 affidavit pursuant to this section must not be a party to the action.

32 6. As used in this section, "design professional" means a person who
33 holds a professional license or certificate issued pursuant to chapter 623,
34 623A or 625 of NRS.

35 Sec. 7. 1. The court shall dismiss an action for the professional
36 negligence of a design professional or of a partnership, corporation,
37 limited-liability company or other form of business organization or
38 association that employed a design professional at the times relevant to
39 the action if the attorney for a complainant fails to:

40 (a) File an affidavit required pursuant to section 6 of this act;

41 (b) File a report required pursuant to subsection 3 of section 6 of this
42 act; or

43 (c) Name the design professional consulted in the affidavit required
44 pursuant to subsection 1 of section 6 of this act.

45 2. The fact that an attorney for a complainant has complied or failed
46 to comply with the provisions of section 6 of this act is admissible in the
47 action.



1 **Sec. 8.** NRS 40.600 is hereby amended to read as follows:
2 40.600 As used in NRS 40.600 to 40.695, inclusive, *and sections 2 to*
3 *7, inclusive, of this act*, unless the context otherwise requires, the words
4 and terms defined in NRS 40.605 to 40.630, inclusive, *and section 2 of*
5 *this act* have the meanings ascribed to them in those sections.

6 **Sec. 9.** NRS 40.615 is hereby amended to read as follows:

7 40.615 ~~“Construction”~~

8 1. *Except as otherwise provided in subsection 2, “construction*
9 *defect” includes , without limitation, a defect in the design, construction,*
10 *manufacture, repair or landscaping of a new residence, of an alteration of*
11 *or addition to an existing residence, or of an appurtenance. The term*
12 *includes physical damage to the residence, an appurtenance or the real*
13 *property to which the residence or appurtenance is affixed that is*
14 *proximately caused by a constructional defect.*

15 2. *The term does not include the design, construction, manufacture,*
16 *repair or landscaping of a new residence, of an alteration of or addition*
17 *to an existing residence, or of an appurtenance that:*

18 (a) *Substantially complied with the applicable building code in effect*
19 *at the time the building permit was issued for the design, construction,*
20 *manufacture, repair or landscaping of a new residence, of an alteration*
21 *of or addition to an existing residence, or of an appurtenance; or*

22 (b) *Has not caused:*

23 (1) *Damage to the residence or appurtenance; or*

24 (2) *Injury to an inhabitant of the residence.*

25 **Sec. 10.** NRS 40.645 is hereby amended to read as follows:

26 40.645 Except as otherwise provided in this section and NRS 40.670:

27 1. For a claim that is not a complex matter, at least 60 days before a
28 claimant commences an action against a contractor for damages arising
29 from a constructional defect, the claimant must give written notice by
30 certified mail, return receipt requested, to the contractor, at the contractor’s
31 last known address, specifying in reasonable detail the defects or any
32 damages or injuries to each residence or appurtenance that is the subject of
33 the claim. The notice must describe in reasonable detail the cause of the
34 defects if the cause is known, the nature and extent that is known of the
35 damage or injury resulting from the defects and the location of each defect
36 within each residence or appurtenance to the extent known. An expert
37 opinion concerning the cause of the defects and the nature and extent of the
38 damage or injury resulting from the defects based on a representative
39 sample of the components of the residences and appurtenances involved in
40 the action satisfies the requirements of this section. During the 45-day
41 period after the contractor receives the notice, on his written request, the
42 contractor is entitled to inspect the property that is the subject of the claim
43 to determine the nature and cause of the defect, damage or injury and the
44 nature and extent of repairs necessary to remedy the defect. The contractor
45 shall, before making the inspection, provide reasonable notice of the
46 inspection and shall make the inspection at a reasonable time. The
47 contractor may take reasonable steps to establish the existence of the
48 defect.



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1 2. If a residence or appurtenance that is the subject of the claim is
2 covered by a homeowner's warranty that is purchased by or on behalf of a
3 claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant
4 shall diligently pursue a claim under the contract.

5 3. Within 60 days after the contractor receives the notice, the
6 contractor shall make a written response to the claimant. The response:

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

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

15 (c) May include:

16 (1) A proposal for monetary compensation, which may include a
17 contribution from a subcontractor.

18 (2) If the contractor or his subcontractor is licensed to make the
19 repairs, an agreement by the contractor or subcontractor to make the
20 repairs.

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

24 ~~[(The repairs must be made within 45 days after the contractor receives~~
25 ~~written notice of acceptance of the response, unless completion is delayed~~
26 ~~by the claimant or by other events beyond the control of the contractor, or~~
27 ~~timely completion of the repairs is not reasonably possible. The claimant~~
28 ~~and the contractor may agree in writing to extend the periods prescribed by~~
29 ~~this section.]~~

30 4. *If a contractor provides the claimant with a written response*
31 *pursuant to subparagraph (2) or (3) of paragraph (c) of subsection 3, the*
32 *claimant shall, upon reasonable notice from the contractor, allow the*
33 *contractor reasonable access to the residence or appurtenance to make*
34 *repairs or cause the repairs to be made. The contractor shall:*

35 (a) *Complete such repairs within 90 days after the date the response is*
36 *served to the claimant, subject to reasonable extensions agreed upon in*
37 *writing by the claimant and the contractor if completion is delayed by the*
38 *claimant or by other events beyond the control of the contractor or*
39 *subcontractor, or timely completion of repairs is not reasonably possible;*

40 (b) *Warrant to the claimant that the repairs will be completed in a*
41 *good and workmanlike manner; and*

42 (c) *Complete the repairs in substantial compliance with applicable*
43 *building codes.*

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



1 technical reports, soil and other engineering reports and other documents or
2 materials relating to the claim that are not privileged.

3 ~~15-1~~ 6. If the claimant is a representative of a homeowner's association,
4 the association shall submit any response made by the contractor to each
5 member of the association.

6 ~~16-1~~ 7. *If a claimant prevents a contractor or subcontractor from
7 making repairs pursuant to this section, the claimant may not recover
8 damages:*

9 (a) *Associated with the defect that the contractor or subcontractor was
10 prevented from repairing; or*

11 (b) *For damage to other parts of the residence or appurtenance that is
12 the proximate result of the refusal of the claimant to allow a contractor
13 or subcontractor to make repairs pursuant to this section.*

14 8. *If, after agreeing to make or cause to be made repairs pursuant to
15 this section, a contractor fails to complete the repairs specified in the
16 agreement in a good and workmanlike manner or in substantial
17 compliance with applicable building codes, the claimant may commence
18 an action against the contractor for damages arising from a
19 constructional defect without satisfying any other requirement of NRS
20 40.600 to 40.695, inclusive, and sections 2 to 7, inclusive, of this act.*

21 9. As used in this section, "subcontractor" means a contractor who
22 performs work on behalf of another contractor in the construction of a
23 residence or appurtenance.

24 **Sec. 11.** NRS 40.650 is hereby amended to read as follows:

25 40.650 1. ~~If a claimant unreasonably rejects a reasonable written~~
26 ~~offer of settlement made as part of a response made pursuant to NRS~~
27 ~~40.645 or 40.682 or does not permit the contractor or independent~~
28 ~~contractor a reasonable opportunity to repair the defect pursuant to an~~
29 ~~accepted offer of settlement and thereafter commences an action governed~~
30 ~~by NRS 40.600 to 40.695, inclusive, the court in which the action is~~
31 ~~commenced may:~~

32 ~~— (a) Deny the claimant's attorney's fees and costs; and~~

33 ~~— (b) Award attorney's fees and costs to the contractor.~~

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

37 ~~2. If a contractor fails to:~~

38 ~~— (a) Make an offer of settlement;~~

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

40 ~~— (c) Complete, in a good and workmanlike manner, the repairs specified~~
41 ~~in an accepted offer;~~

42 ~~— (d) Agree to a mediator or accept the appointment of a mediator~~
43 ~~pursuant to NRS 40.680 or subsection 4 of NRS 40.682; or~~

44 ~~— (e) Participate in mediation;~~

45 ~~the limitations on damages and defenses to liability provided in NRS~~
46 ~~40.600 to 40.695, inclusive, do not apply and the claimant may commence~~
47 ~~an action without satisfying any other requirement of NRS 40.600 to~~
48 ~~40.695, inclusive.] Unless mediation is waived in writing by the~~

49 ~~contractor and the claimant pursuant to NRS 40.680 or subsection 4 of~~



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1 *NRS 40.682, the claimant shall provide the contractor a written demand*
2 *for settlement of all claims against the contractor set forth in the written*
3 *notice of defects given or served pursuant to NRS 40.645 or 40.682 not*
4 *later than 45 days before the date set for the first session of the mediation*
5 *required pursuant to NRS 40.680. The written demand for settlement*
6 *must:*

7 *(a) Include, without limitation, the cost to repair each constructional*
8 *defect alleged in the written notice of defects; and*

9 *(b) Contain sufficient detail to allow the contractor to independently*
10 *evaluate the cost to repair each constructional defect alleged in the*
11 *written notice of defects.*

12 *2. The contractor shall respond to the written demand for settlement*
13 *not later than 10 days before the date set for the first session of the*
14 *mediation. The response of the contractor must:*

15 *(a) Address the cost to repair each constructional defect contained in*
16 *the written demand for settlement of the claimant; and*

17 *(b) Contain sufficient detail to allow the claimant to evaluate the*
18 *response.*

19 *3. If the parties do not reach an agreement concerning the matter*
20 *during the mediation and the claimant fails to recover an amount equal*
21 *to or greater than the amount of the written demand for settlement made*
22 *pursuant to this section, then the claimant is not entitled to recover from*
23 *the contractor:*

24 *(a) Attorney's fees and costs of the claimant incurred after the*
25 *conclusion of mediation;*

26 *(b) Any prejudgment interest provided by statute; or*

27 *(c) Expert fees and costs incurred after the conclusion of mediation.*

28 *4. If the parties do not reach an agreement concerning the matter*
29 *during mediation and the claimant recovers an amount greater than the*
30 *amount of the written demand for settlement made pursuant to this*
31 *section, then, in addition to the damages recoverable pursuant to NRS*
32 *40.655, the claimant is entitled to recover from the contractor, as*
33 *additional damages, an amount equal to the attorney's fees awarded*
34 *pursuant to NRS 40.655.*

35 ~~13-1~~ *5. If coverage under a homeowner's warranty is denied by an*
36 *insurer in bad faith, the homeowner and the contractor have a right of*
37 *action for the sums that would have been paid if coverage had been*
38 *provided, plus reasonable attorney's fees and costs.*

39 **Sec. 12.** NRS 40.655 is hereby amended to read as follows:

40 40.655 1. Except as otherwise provided in NRS 40.650, in a claim
41 governed by NRS 40.600 to 40.695, inclusive, *and sections 2 to 7,*
42 *inclusive, of this act,* the claimant may recover only the following damages
43 to the extent proximately caused by a constructional defect:

44 (a) Any reasonable attorney's fees;

45 (b) The reasonable cost of any repairs already made that were necessary
46 and of any repairs yet to be made that are necessary to cure any
47 constructional defect that the contractor failed to cure and the reasonable
48 expenses of temporary housing reasonably necessary during the repair ~~13-1~~



1 ~~—(c) The~~ *or the* reduction in market value of the residence or accessory
2 structure, if any, to the extent the reduction is because of structural failure
3 ~~;~~
4 ~~—(d) The loss of the use of all or any part of the residence;~~
5 ~~—(e) , whichever is less;~~
6 *(c)* The reasonable value of any other property damaged by the
7 constructional defect;
8 ~~[(d)]~~ *(d)* Any additional costs reasonably incurred by the claimant,
9 including, but not limited to, any costs and fees incurred for the retention
10 of experts to:
11 (1) Ascertain the nature and extent of the constructional defects;
12 (2) Evaluate appropriate corrective measures to estimate the value of
13 loss of use; and
14 (3) Estimate the value of loss of use, the cost of temporary housing
15 and the reduction of market value of the residence; and
16 ~~[(e)]~~ *(e)* Any interest provided by statute.
17 2. The amount of any attorney's fees awarded pursuant to this section
18 must be approved by the court.
19 3. If a contractor complies with the provisions of NRS 40.600 to
20 40.695, inclusive, *and sections 2 to 7, inclusive, of this act*, the claimant
21 may not recover from the contractor, as a result of the constructional
22 defect, anything other than that which is provided pursuant to NRS 40.600
23 to 40.695, inclusive ~~[(d)]~~ *, and sections 2 to 7, inclusive, of this act.*
24 4. As used in this section, "structural failure" means physical damage
25 to the load-bearing portion of a residence or appurtenance caused by a
26 failure of the load-bearing portion of the residence or appurtenance.
27 **Sec. 13.** NRS 40.665 is hereby amended to read as follows:
28 40.665 In addition to any other method provided for settling a claim
29 pursuant to NRS 40.600 to 40.695, inclusive, *and sections 2 to 7,*
30 *inclusive, of this act*, a contractor may, pursuant to a written agreement
31 entered into with a claimant, settle a claim by repurchasing the claimant's
32 residence and the real property upon which it is located. The agreement
33 may include provisions which reimburse the claimant for:
34 1. The market value of the residence as if no constructional defect
35 existed, except that if a residence is less than 2 years of age and was
36 purchased from the contractor against whom the claim is brought, the
37 market value is the price at which the residence was sold to the claimant;
38 2. The value of any improvements made to the property by a person
39 other than the contractor;
40 3. Reasonable attorney's fees and fees for experts; and
41 4. Any costs, including costs and expenses for moving and costs,
42 points and fees for loans.
43 ~~[Any offer of settlement made that includes the items listed in this section~~
44 ~~shall be deemed reasonable for the purposes of subsection 1 of NRS~~
45 ~~40.650.]~~
46 **Sec. 14.** NRS 40.670 is hereby amended to read as follows:
47 40.670 1. ~~[A contractor who receives written notice of]~~ *If a claimant*
48 *discovers* a constructional defect resulting from work performed by the
49 contractor or his agent, employee or subcontractor which creates an



1 imminent threat to the health or safety of the inhabitants of the residence
2 ~~[shall take reasonable steps to cure the defect as soon as practicable.]~~, *the*
3 *claimant shall provide the contractor against whom the claim is alleged*
4 *with written notice of the alleged constructional defect and a report or*
5 *certification from an engineer or contractor licensed in this state or a*
6 *building inspector employed by a governmental body with jurisdiction*
7 *certifying that the alleged constructional defect presents an imminent*
8 *threat to the health or safety of the inhabitants of the residence.*

9 2. *If a contractor receives the written notice and report or*
10 *certification as set forth in subsection 1, the contractor shall take*
11 *reasonable steps to cure the defect as soon as practicable.* The contractor
12 shall not cure the defect by making any repairs for which he is not licensed
13 or by causing any repairs to be made by a person who is not licensed to
14 make those repairs. If the contractor fails to cure the defect in a reasonable
15 time, the owner of the residence may have the defect cured and may
16 recover from the contractor the reasonable cost of the repairs plus
17 reasonable attorney's fees and costs in addition to any other damages
18 recoverable under any other law.

19 ~~[2. A contractor who does not cure a defect pursuant to this section~~
20 ~~because he has determined, in good faith and after a reasonable inspection,~~
21 ~~that there is not an imminent threat to the health or safety of the inhabitants~~
22 ~~is not liable for attorney's fees and costs pursuant to this section, except~~
23 ~~that if a building inspector employed by a governmental body with~~
24 ~~jurisdiction certifies that there is an imminent threat to the health and safety~~
25 ~~of the inhabitants of the residence, the contractor is subject to the~~
26 ~~provisions of subsection 1.]~~

27 **Sec. 15.** NRS 40.680 is hereby amended to read as follows:

28 40.680 1. Except as otherwise provided in this chapter, before an
29 action based on a claim governed by NRS 40.600 to 40.695, inclusive, *and*
30 *sections 2 to 7, inclusive, of this act* may be commenced in court, the
31 matter must be submitted to mediation, unless mediation is waived in
32 writing by the contractor and the claimant.

33 2. The claimant and contractor ~~[must]~~ *shall* select a mediator by
34 agreement. If the claimant and contractor fail to agree upon a mediator
35 within 45 days after a mediator is first selected by the claimant, either party
36 may petition the American Arbitration Association, the Nevada Arbitration
37 Association, Nevada Dispute Resolution Services or any other mediation
38 service acceptable to the parties for the appointment of a mediator. A
39 mediator so appointed may discover only those documents or records
40 which are necessary to conduct the mediation. ~~[The]~~ *Except as otherwise*
41 *provided in subsection 7, the* mediator shall convene the mediation within
42 60 days after the matter is submitted to him, unless the parties agree to
43 extend the time. Except in a complex matter, the claimant shall, before the
44 mediation begins, deposit \$50 with the mediation service and the
45 contractor shall deposit with the mediation service the remaining amount
46 estimated by the mediation service as necessary to pay the fees and
47 expenses of the mediator for the first session of mediation, and the
48 contractor shall deposit additional amounts demanded by the mediation
49 service as incurred for that purpose. In a complex matter, each party shall



1 share equally in the deposits estimated by the mediation service. Unless
2 otherwise agreed, the total fees for each day of mediation and the mediator
3 must not exceed \$750 per day.

4 3. If the parties do not reach an agreement concerning the matter
5 during mediation or if the contractor fails to pay the required fees and
6 appear, the claimant may commence his action in court and:

7 (a) The reasonable costs and fees of the mediation are recoverable by
8 the prevailing party as costs of the action.

9 (b) Either party may petition the court in which the action is
10 commenced for the appointment of a special master.

11 4. A special master appointed pursuant to subsection 3 may:

12 (a) Review all pleadings, papers or documents filed with the court
13 concerning the action.

14 (b) Coordinate the discovery of any books, records, papers or other
15 documents by the parties, including the disclosure of witnesses and the
16 taking of the deposition of any party.

17 (c) Order any inspections on the site of the property by a party and any
18 consultants or experts of a party.

19 (d) Order settlement conferences and attendance at those conferences by
20 any representative of the insurer of a party.

21 (e) Require any attorney representing a party to provide statements of
22 legal and factual issues concerning the action.

23 (f) Refer to the judge who appointed him or to the presiding judge of the
24 court in which the action is commenced any matter requiring assistance
25 from the court.

26 The special master shall not, unless otherwise agreed by the parties,
27 personally conduct any settlement conferences or engage in any ex parte
28 meetings regarding the action.

29 5. Upon application by a party to the court in which the action is
30 commenced, any decision or other action taken by a special master
31 appointed pursuant to this section may be appealed to the court for a
32 decision.

33 6. A report issued by a mediator or special master that indicates that
34 either party has failed to appear before him or to mediate in good faith is
35 admissible in the action, but a statement or admission made by either party
36 in the course of mediation is not admissible.

37 *7. An agreement by a contractor pursuant to NRS 40.645 or section 5*
38 *of this act to make repairs or cause the repairs to be made extends the*
39 *time required to convene the first session of mediation by a period of time*
40 *agreed upon in writing by the contractor and claimant for the completion*
41 *of the repairs.*

42 **Sec. 16.** NRS 40.682 is hereby amended to read as follows:

43 40.682 Except as otherwise provided in this section and NRS 40.670:

44 1. Notwithstanding the provisions of subsection 1 of NRS 40.680, a
45 claimant may commence an action in district court in a complex matter. If
46 the claimant commences an action in district court, he shall:

47 (a) File and serve the summons and complaint as required by law; and

48 (b) At the same time and in the same manner as the claimant serves the
49 summons and complaint upon the contractor, serve upon the contractor a



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1 written notice specifying in reasonable detail, to the extent known, the
2 defects and any damages or injuries to each residence or appurtenance that
3 is the subject of the claim. The notice must describe in reasonable detail
4 each defect, the specific location of each defect, and the nature and extent
5 that is known of the damage or injury resulting from each defect. If an
6 expert opinion has been rendered concerning the existence or extent of the
7 defects, a written copy of the opinion must accompany the notice. An
8 expert opinion that specifies each defect to the extent known, the specific
9 location of each defect to the extent known, and the nature and extent that
10 is known of the damage or injury resulting from each defect, based on a
11 valid and reliable representative sample of the residences and
12 appurtenances involved in the action, satisfies the requirements of this
13 section.

14 2. The contractor shall file and serve an answer to the complaint as
15 required by law.

16 3. Not later than 30 days after the date of service of the answer to the
17 complaint, the contractor and claimant shall meet to establish a schedule
18 for:

19 (a) The exchange of or reasonable access for the other party to all
20 relevant reports, photos, correspondence, plans, specifications, warranties,
21 contracts, subcontracts, work orders for repair, videotapes, technical
22 reports, soil and other engineering reports and other documents or
23 materials relating to the claim that are not privileged;

24 (b) The inspection of the residence or appurtenance that is the subject of
25 the claim to evaluate the defects set forth in the notice served pursuant to
26 subsection 1; and

27 (c) The conduct of any tests that are reasonably necessary to determine
28 the nature and cause of a defect or any damage or injury, and the nature
29 and extent of repairs necessary to remedy a defect or any damage or injury.
30 The party conducting the test shall provide reasonable notice of the test to
31 all other parties and conduct the test at a reasonable time.

32 4. At the meeting held pursuant to subsection 3, the claimant and
33 contractor shall:

34 (a) Establish a schedule for the addition of any additional parties to the
35 complaint or to file any third-party complaint against an additional party
36 who may be responsible for all or a portion of the defects set forth in the
37 notice served pursuant to subsection 1;

38 (b) Unless the claimant and contractor agree otherwise in writing, select
39 a mediator and proceed with mediation as provided in subsections 2 to ~~6~~
40 7, inclusive, of NRS 40.680; and

41 (c) If the claimant and contractor agree, select a special master and
42 jointly petition the court for his appointment pursuant to subsection 7.

43 5. Each party added to the complaint or against whom a third-party
44 complaint is filed pursuant to subsection 4 shall file and serve an answer as
45 required by law.

46 6. If the claimant or contractor adds a party to the complaint or files a
47 third-party complaint, then not later than 60 days after the date determined
48 pursuant to paragraph (a) of subsection 4, the contractor, claimant and each
49 party added to the complaint or against whom a third-party complaint is



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1 filed shall meet to establish a schedule for the activities set forth in
2 paragraphs (a), (b) and (c) of subsection 3.

3 7. If a special master has not been appointed, the contractor, claimant
4 or a party added to the complaint or against whom a third-party complaint
5 is filed may petition the court for the appointment of a special master at
6 any time after the meeting held pursuant to subsection 3. The special
7 master may:

8 (a) Take any action set forth in subsection 4 of NRS 40.680;
9 (b) Exercise any power set forth in Rule 53 of the Nevada Rules of Civil
10 Procedure; and

11 (c) Subject to the provisions of NRS 40.680, if the parties fail to
12 establish a schedule or determine a date as required in subsection 3, 4 or 6,
13 establish the schedule or determine the date.

14 8. Unless the mediation required pursuant to paragraph (b) of
15 subsection 4 is completed or the contractor and claimant have agreed in
16 writing not to mediate the claim pursuant to paragraph (b) of subsection 4,
17 a party shall not propound interrogatories or requests for admission, take a
18 deposition or file a motion that is dispositive of the action except:

19 (a) Upon agreement of the parties; or
20 (b) With the prior approval of the court or special master.

21 9. If a residence or appurtenance that is the subject of the claim is
22 covered by a homeowner's warranty that is purchased by or on behalf of a
23 claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant
24 shall diligently pursue a claim under the contract.

25 10. ~~Unless~~ *Except as otherwise provided in section 5 of this act or if*
26 the parties agree otherwise, not less than 60 days before the date of the
27 mediation pursuant to paragraph (b) of subsection 4 is convened, the
28 contractor shall make a written response to the claimant that meets the
29 requirements set forth in subsection 3 of NRS 40.645.

30 11. If the claimant is a representative of a homeowner's association,
31 the association shall submit any response made by the contractor to each
32 member of the association in writing not more than 30 days after the date
33 the claimant receives the response.

34 12. The claimant shall respond to the written response of the contractor
35 within 45 days after the response of the contractor is mailed to the
36 claimant.

37 **Sec. 17.** The amendatory provisions of this act do not apply to a claim
38 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
39 inclusive, and sections 2 to 7, inclusive, of this act, unless the claim was
40 initiated or the action was commenced on or after October 1, 2001.

