

ASSEMBLY BILL NO. 133—ASSEMBLYMAN DINI

FEBRUARY 14, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning construction, constructional defects and common-interest communities. (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; requiring a claimant to provide notice concerning constructional defects to a contractor and allow the contractor to make repairs before commencing an action against the contractor; requiring an affidavit in support of an action for professional negligence against a design professional; imposing certain restrictions to prevent property managers from being encouraged to file a claim for a constructional defect; requiring a contractor to provide certain information to the initial purchaser of a residence; 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 11, inclusive, of this act.

3 **Sec. 2.** *“Design professional” means a person who holds a*
4 *professional license or certificate issued pursuant to chapter 623, 623A*
5 *or 625 of NRS.*

6 **Sec. 3.** *“Subcontractor” means a contractor who performs work on*
7 *behalf of another contractor in the construction of a residence or*
8 *appurtenance.*

9 **Sec. 4.** *“Supplier” means a person who provides materials,*
10 *equipment or other supplies for the construction of a residence or*
11 *appurtenance.*

12 **Sec. 5.** *Except as otherwise provided in NRS 40.670 and subsection*
13 *1 of section 9 of this act:*

14 *1. Before a claimant may commence an action against a contractor*
15 *for damages arising from a constructional defect, the claimant must give*
16 *written notice by certified mail, return receipt requested, to the*
17 *contractor, at the contractor’s last address listed in the records of the*
18 *state contractors’ board, or at the contractor’s last known address if his*



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1 address is not listed in the records of the state contractors' board,
2 specifying in reasonable detail the defects or any damages or injuries to
3 each residence or appurtenance that is the subject of the claim. The
4 notice must describe in reasonable detail the cause of the defects if the
5 cause is known, the nature and extent that is known of the damage or
6 injury resulting from the defects and the location of each defect within
7 each residence or appurtenance to the extent known. An expert opinion
8 concerning the cause of the defects and the nature and extent of the
9 damage or injury resulting from the defects based on a representative
10 sample of the components of the residences and appurtenances involved
11 in the action satisfies the requirements of this subsection.

12 2. Within 15 days after receiving a notice pursuant to subsection 1, a
13 contractor shall forward a copy of the notice by certified mail, return
14 receipt requested, to each subcontractor, supplier and design
15 professional who the contractor reasonably believes is responsible for a
16 defect specified in the notice and include with the copy of the notice the
17 specific defect for which the contractor believes the subcontractor,
18 supplier or design professional is responsible.

19 3. The claimant shall, upon reasonable notice, allow the contractor
20 and a subcontractor, supplier or design professional who received the
21 notice pursuant to subsection 2 to access the residence or appurtenance
22 that is the subject of the notice to determine the nature and extent of a
23 defect and the nature and extent of repairs necessary to remedy the
24 defect.

25 4. Within 15 days after a subcontractor, supplier or design
26 professional receives a copy of a notice pursuant to subsection 2, he shall
27 provide the contractor with a statement indicating:

28 (a) Whether the subcontractor, supplier or design professional will
29 repair the defect for which the contractor believes the subcontractor,
30 supplier or design professional is responsible; and

31 (b) If the subcontractor, supplier or design professional decides to
32 repair the defect, an estimate of the length of time required for the repair,
33 and at least two proposed dates on and times at which the subcontractor,
34 supplier or design professional can begin making the repair.

35 **Sec. 6.** Except as otherwise provided in NRS 40.670:

36 1. Except as otherwise provided in NRS 40.672, a contractor who
37 receives notice of a constructional defect pursuant to subsection 1 of
38 section 5 of this act may make the repairs necessary to remedy the defects
39 and repair any damage or injury to the residence or appurtenance
40 described in the notice or arrange to have such repairs made by a
41 subcontractor, supplier or design professional to whom the contractor
42 forwarded notice of the defect pursuant to subsection 2 of section 5 of
43 this act. The contractor shall ensure that any such repairs are completed
44 within a reasonable time, but in any event:

45 (a) If the constructional defect is not part of a complex matter, not
46 later than 45 days after receiving the notice; or

47 (b) If the constructional defect is part of a complex matter, not later
48 than 90 days after receiving the notice,



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1 unless the claimant and the contractor negotiate in good faith and agree
2 in writing to extend reasonably the time for completing the repairs in
3 which case the repairs must be completed not later than the time set forth
4 in the agreement.

5 2. In making repairs pursuant to subsection 1, the contractor or a
6 subcontractor, supplier or design professional who is responsible for
7 making the repairs shall:

8 (a) Make the repairs at reasonable times that are agreed to in advance
9 by the claimant, or by the owner of the residence or appurtenance if the
10 claimant is a representative of a homeowner's association;

11 (b) Ensure that all of the work to make the repairs is completed by
12 contractors and subcontractors who are properly licensed, bonded and
13 insured;

14 (c) Take any action necessary to prevent a mechanic's lien from being
15 obtained on the property of the claimant on which the repairs are being
16 made, to remove such a mechanic's lien if one is obtained, and to
17 indemnify the claimant against any expenses incurred by the claimant
18 concerning such a mechanic's lien; and

19 (d) Provide to the claimant a written report of each repair made, the
20 method used to make the repair and the parts replaced in making such
21 repairs within 10 days after the repairs are made.

22 3. The claimant shall allow the contractor and a subcontractor,
23 supplier or design professional who is responsible for making repairs
24 pursuant to subsection 1 a reasonable opportunity to make repairs
25 pursuant to subsection 1.

26 4. If the claimant is not satisfied with the repairs made pursuant to
27 subsection 1 or NRS 40.672 or the contractor does not make the repairs
28 or have the repairs made within the time set forth in subsection 1 or
29 within the time agreed to in writing by the claimant and the contractor,
30 the claimant may commence an action governed by NRS 40.600 to
31 40.695, inclusive, and sections 2 to 11, inclusive, of this act against the
32 contractor for a constructional defect or any damages or injuries that
33 were specified in the notice provided to the contractor pursuant to section
34 5 of this act. A claimant who is not satisfied with the repairs is not
35 required to give additional notice pursuant to NRS 40.645 or 40.682
36 before commencing such an action.

37 **Sec. 7.** 1. Except as otherwise provided in subsection 3, a
38 contractor who does not provide a subcontractor, supplier or design
39 professional with notice of a constructional defect pursuant to subsection
40 2 of section 5 of this act who the contractor reasonably believes is
41 responsible for a defect specified in the notice provided to the contractor
42 pursuant to subsection 1 of section 5 of this act, may not recover
43 attorney's fees, costs, fees for expert witnesses or fees for consultants
44 from the subcontractor, supplier or design professional that are incurred
45 by the contractor in defending an action against the contractor for the
46 constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and
47 sections 2 to 11, inclusive, of this act.

48 2. Except as otherwise provided in subsection 3, after a claimant files
49 a claim against a contractor that is governed by NRS 40.600 to 40.695,



1 inclusive, and sections 2 to 11, inclusive, of this act, a subcontractor,
2 supplier or design professional who is responsible for a constructional
3 defect involved in the claim and who did not receive notice of the defect
4 pursuant to subsection 2 of section 5 of this act may present directly to
5 the claimant an offer to repair the defect. If the claimant accepts the
6 offer, the subcontractor, supplier or design professional repairs the
7 defect to the satisfaction of the claimant and the claimant provides a
8 statement in writing to the subcontractor, supplier or design professional
9 indicating that the defect was repaired to his satisfaction, the contractor
10 against whom the claim was filed may not pursue any claim related to the
11 defect that was repaired against the subcontractor, supplier or design
12 professional who repaired the defect.

13 3. The provisions of this section do not apply to a contractor who did
14 not give notice of the constructional defect to the subcontractor, supplier
15 or design professional if the contractor could not, after a good faith
16 effort, identify the subcontractor, supplier or design professional who
17 may have been responsible for the defect within the time set forth for
18 providing a notice to the subcontractor, supplier or design professional.

19 **Sec. 8.** 1. A contractor, subcontractor, supplier or design
20 professional who receives notice of a constructional defect pursuant to
21 section 5 of this act may present the notice to an insurer who issued a
22 policy of insurance covering all or part of the conduct or business of the
23 contractor, subcontractor, supplier or design professional.

24 2. A notice provided to an insurer pursuant to subsection 1:
25 (a) Constitutes the making of a claim under the policy by the
26 contractor, subcontractor, supplier or design professional; and
27 (b) Requires the contractor, subcontractor, supplier or design
28 professional and the insurer to perform any obligations or duties
29 required by the policy upon the making of a claim.

30 **Sec. 9.** 1. A claimant is not required to provide a contractor with
31 notice pursuant to section 5 of this act before commencing an action
32 against the contractor for damages arising from a constructional defect
33 if:

34 (a) The contractor has threatened or initiated legal proceedings
35 against the claimant at any time;

36 (b) The claimant has been sued by a third party or the contractor in
37 connection with or resulting from a constructional defect and the
38 claimant is filing a third-party complaint or cross-complaint against the
39 contractor concerning that constructional defect; or

40 (c) The contractor has threatened to commit or committed an act of
41 violence or a criminal offense against the claimant or the property of the
42 claimant, or the claimant has a reasonable belief that the contractor
43 intends to commit an act of violence or a criminal offense against the
44 claimant or the property of the claimant.

45 2. Nothing in sections 5 to 9, inclusive, of this act affects the ability
46 of claimants to maintain a class action for constructional defects against
47 a contractor.

48 3. Nothing in sections 5 to 9, inclusive, of this act affects the ability
49 of a claimant, contractor, subcontractor, supplier or design professional



1 to pursue any remedy available through the state contractors' board
2 pursuant to chapter 624 of NRS.

3 **Sec. 10.** 1. Except as otherwise provided in subsection 2, in an
4 action pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 to 11,
5 inclusive, of this act for the professional negligence of a design
6 professional or a person primarily engaged in the practice of
7 professional engineering, land surveying, architecture or landscape
8 architecture, concurrently with the service of the first pleading in an
9 action, the attorney for the complainant shall file an affidavit with the
10 court stating that the attorney:

- 11 (a) Has reviewed the facts of the case;
12 (b) Has consulted with an expert;
13 (c) Reasonably believes the expert who was consulted is
14 knowledgeable in the relevant discipline involved in the action; and
15 (d) Has concluded on the basis of his review and the consultation with
16 the expert that the action has a reasonable basis in law and fact.

17 2. The attorney for the complainant may file the affidavit required
18 pursuant to subsection 1 at a later time if he could not consult with an
19 expert and prepare the affidavit before filing the action without causing
20 the action to be impaired or barred by the statute of limitations or repose,
21 or other limitations prescribed by law. If the attorney must submit the
22 affidavit late, he shall file an affidavit concurrently with the service of
23 the first pleading in the action stating his reason for failing to comply
24 with subsection 1 and the attorney shall consult with an expert and file
25 the affidavit required pursuant to subsection 1 not later than 45 days
26 after filing the action.

27 3. In addition to the statement included in the affidavit pursuant to
28 subsection 1, a report must be attached to the affidavit. Except as
29 otherwise provided in subsection 4, the report must be prepared by the
30 expert consulted by the attorney and include, without limitation:

- 31 (a) The resumé of the expert;
32 (b) A statement that the expert is experienced in each discipline which
33 is the subject of the report;
34 (c) A copy of each nonprivileged document reviewed by the expert in
35 preparing his report, including, without limitation, each record, report
36 and related document that the expert has determined is relevant to the
37 allegations of negligent conduct that are the basis for the action;
38 (d) The conclusions of the expert and the basis for the conclusions;
39 and
40 (e) A statement that the expert has concluded that there is a
41 reasonable basis for filing the action.

42 4. In an action brought by a claimant in which an affidavit is
43 required to be filed pursuant to subsection 1:

- 44 (a) The report required pursuant to subsection 3 is not required to
45 include the information set forth in paragraphs (c) and (d) of subsection
46 3 if the claimant or his attorney files an affidavit, at the time that the
47 affidavit is filed pursuant to subsection 1, stating that he made
48 reasonable efforts to obtain the nonprivileged documents described in



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1 *paragraph (c) of subsection 3, but was unable to obtain such documents*
2 *before filing the action;*

3 *(b) The claimant or his attorney shall amend the report required*
4 *pursuant to subsection 3 to include any documents and information*
5 *required pursuant to paragraph (c) or (d) of subsection 3 as soon as*
6 *reasonably practicable after receiving the document or information; and*

7 *(c) The court may dismiss the action if the claimant and his attorney*
8 *fail to comply with the requirements of paragraph (b).*

9 *5. An expert consulted by an attorney to prepare an affidavit*
10 *pursuant to this section must not be a party to the action.*

11 *6. As used in this section, "expert" means a person who:*

12 *(a) Is licensed in a state to engage in the practice of professional*
13 *engineering, land surveying, architecture or landscape architecture; or*

14 *(b) Teaches or has taught at an accredited college or university in a*
15 *discipline relevant to the action.*

16 **Sec. 11.** *1. The court shall dismiss an action filed pursuant to NRS*
17 *40.600 to 40.695, inclusive, and sections 2 to 11, inclusive, of this act for*
18 *the professional negligence of a design professional or a person*
19 *primarily engaged in the practice of professional engineering, land*
20 *surveying, architecture or landscape architecture if the attorney for a*
21 *complainant fails to:*

22 *(a) File an affidavit required pursuant to section 10 of this act;*

23 *(b) File a report required pursuant to subsection 3 of section 10 of this*
24 *act; or*

25 *(c) Name the expert consulted in the affidavit required pursuant to*
26 *subsection 1 of section 10 of this act.*

27 *2. The fact that an attorney for a complainant has complied or failed*
28 *to comply with the provisions of section 10 of this act is admissible in the*
29 *action.*

30 **Sec. 12.** NRS 40.600 is hereby amended to read as follows:

31 40.600 As used in NRS 40.600 to 40.695, inclusive, *and sections 2 to*
32 *11, inclusive, of this act*, unless the context otherwise requires, the words
33 and terms defined in NRS 40.605 to 40.630, inclusive, *and sections 2 to*
34 *11, inclusive, of this act* have the meanings ascribed to them in those
35 sections.

36 **Sec. 13.** NRS 40.645 is hereby amended to read as follows:

37 40.645 Except as otherwise provided in this section and NRS 40.670:

38 1. For a claim that is not a complex matter, *if a contractor does not*
39 *take action to make repairs or attempt to make repairs pursuant to*
40 *subsection 1 of section 6 of this act within the time set forth in subsection*
41 *1 of section 6 of this act or within the time agreed to in writing by the*
42 *claimant and the contractor*, at least 60 days before a claimant commences
43 an action against a contractor for damages arising from a constructional
44 defect, the claimant must give written notice by certified mail, return
45 receipt requested, to the contractor, at the contractor's last known address,
46 specifying in reasonable detail the defects or any damages or injuries to
47 each residence or appurtenance that is the subject of the claim. The notice
48 must describe in reasonable detail the cause of the defects if the cause is
49 known, the nature and extent that is known of the damage or injury



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1 resulting from the defects and the location of each defect within each
2 residence or appurtenance to the extent known. An expert opinion
3 concerning the cause of the defects and the nature and extent of the damage
4 or injury resulting from the defects based on a representative sample of the
5 components of the residences and appurtenances involved in the action
6 satisfies the requirements of this section. During the 45-day period after the
7 contractor receives the notice, on his written request, the contractor is
8 entitled to inspect the property that is the subject of the claim to determine
9 the nature and cause of the defect, damage or injury and the nature and
10 extent of repairs necessary to remedy the defect. The contractor shall,
11 before making the inspection, provide reasonable notice of the inspection
12 and shall make the inspection at a reasonable time. The contractor may
13 take reasonable steps to establish the existence of the defect.

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

18 3. Within 60 days after the contractor receives ~~the notice,~~ **notice**
19 **pursuant to subsection 1,** the contractor shall make a written response to
20 the claimant. The response:

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

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

29 (c) May include ~~the~~:

30 ~~(1) A~~ **a** proposal for monetary compensation, which may include a
31 contribution from a subcontractor.

32 ~~(2) If the contractor or his subcontractor is licensed to make the~~
33 ~~repairs, an agreement by the contractor or subcontractor to make the~~
34 ~~repairs.~~

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

38 ~~The repairs must be made within 45 days after the contractor receives~~
39 ~~written notice of acceptance of the response, unless completion is delayed~~
40 ~~by the claimant or by other events beyond the control of the contractor, or~~
41 ~~timely completion of the repairs is not reasonably possible. The claimant~~
42 ~~and the contractor may agree in writing to extend the periods prescribed by~~
43 ~~this section.~~

44 4. 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,



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

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

6 ~~{6. As used in this section, "subcontractor" means a contractor who~~
7 ~~performs work on behalf of another contractor in the construction of a~~
8 ~~residence or appurtenance.}~~

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

10 40.650 1. If a claimant unreasonably rejects a reasonable written
11 offer of settlement made as part of a response made pursuant to NRS
12 40.645 or 40.682 or does not permit the contractor or independent
13 contractor a reasonable opportunity to repair the defect pursuant to ~~an~~
14 ~~accepted offer of settlement~~ *section 6 of this act* and thereafter
15 commences an action governed by NRS 40.600 to 40.695, inclusive, *and*
16 *sections 2 to 11, inclusive, of this act*, the court in which the action is
17 commenced may:

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

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

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

23 2. If a contractor fails to:

24 (a) Make an offer of settlement;

25 (b) Make a good faith response to the claim asserting no liability;

26 (c) Complete, in a good and workmanlike manner, the repairs ~~{specified~~
27 ~~in an accepted offer.}~~ *he makes pursuant to section 6 of this act;*

28 (d) Agree to a mediator or accept the appointment of a mediator
29 pursuant to NRS 40.680 or subsection 4 of NRS 40.682; or

30 (e) Participate in mediation,
31 the limitations on damages and defenses to liability provided in NRS
32 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this act* do
33 not apply and the claimant may commence an action without satisfying any
34 other requirement of NRS 40.600 to 40.695, inclusive ~~{}~~ *, and sections 2*
35 *to 11, inclusive, of this act.*

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

40 **Sec. 15.** NRS 40.667 is hereby amended to read as follows:

41 40.667 1. Except as otherwise provided in subsection 2, a written
42 waiver or settlement agreement executed by a claimant after a contractor
43 has corrected or otherwise repaired a constructional defect does not bar a
44 claim for the constructional defect if it is determined that the contractor
45 failed to correct or repair the defect properly.

46 2. The provisions of subsection 1 do not apply to any written waiver or
47 settlement agreement described in subsection 1, unless:

48 (a) The claimant has obtained the opinion of an expert concerning the
49 constructional defect;



1 (b) The claimant has provided the contractor with a written notice of the
2 defect pursuant to NRS 40.645 ~~for 40.682~~, *40.682 or section 5 of this act*
3 and a copy of the expert's opinion; and
4 (c) The claimant and the contractor have complied with the
5 requirements for inspection and repair as provided in NRS 40.600 to
6 40.695, inclusive ~~H~~, *and sections 2 to 11, inclusive, of this act.*
7 3. If a claimant does not prevail in any action which is not barred
8 pursuant to this section, the court may:
9 (a) Deny the claimant's attorney's fees, fees for an expert witness or
10 costs; and
11 (b) Award attorney's fees and costs to the contractor.
12 **Sec. 16.** NRS 40.682 is hereby amended to read as follows:
13 40.682 Except as otherwise provided in this section and NRS 40.670:
14 1. Notwithstanding the provisions of subsection 1 of NRS 40.680, a
15 claimant may commence an action in district court in a complex matter. If
16 the claimant commences an action in district court he shall:
17 (a) File and serve the summons and complaint as required by law; and
18 (b) ~~IAH~~ *If a contractor does not take action to make repairs or attempt*
19 *to make repairs pursuant to subsection 1 of section 6 of this act within*
20 *the time set forth in subsection 1 of section 6 of this act or within the time*
21 *agreed to in writing by the claimant and the contractor, at the same time*
22 *and in the same manner as the claimant serves the summons and complaint*
23 *upon the contractor, serve upon the contractor a written notice specifying*
24 *in reasonable detail, to the extent known, the defects and any damages or*
25 *injuries to each residence or appurtenance that is the subject of the claim.*
26 *The notice must describe in reasonable detail each defect, the specific*
27 *location of each defect, and the nature and extent that is known of the*
28 *damage or injury resulting from each defect. If an expert opinion has been*
29 *rendered concerning the existence or extent of the defects, a written copy*
30 *of the opinion must accompany the notice. An expert opinion that specifies*
31 *each defect to the extent known, the specific location of each defect to the*
32 *extent known, and the nature and extent that is known of the damage or*
33 *injury resulting from each defect, based on a valid and reliable*
34 *representative sample of the residences and appurtenances involved in the*
35 *action, satisfies the requirements of this section.*
36 2. The contractor shall file and serve an answer to the complaint as
37 required by law.
38 3. Not later than 30 days after the date of service of the answer to the
39 complaint, the contractor and claimant shall meet to establish a schedule
40 for:
41 (a) The exchange of or reasonable access for the other party to all
42 relevant reports, photos, correspondence, plans, specifications, warranties,
43 contracts, subcontracts, work orders for repair, videotapes, technical
44 reports, soil and other engineering reports and other documents or
45 materials relating to the claim that are not privileged;
46 (b) The inspection of the residence or appurtenance that is the subject of
47 the claim to evaluate the defects set forth in the notice served pursuant to
48 subsection 1; and



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

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

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

12 (b) Unless the claimant and contractor agree otherwise in writing, select
13 a mediator and proceed with mediation as provided in subsections 2 to 6,
14 inclusive, of NRS 40.680; and

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

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

20 6. If the claimant or contractor adds a party to the complaint or files a
21 third-party complaint, then not later than 60 days after the date determined
22 pursuant to paragraph (a) of subsection 4, the contractor, claimant and each
23 party added to the complaint or against whom a third-party complaint is
24 filed shall meet to establish a schedule for the activities set forth in
25 paragraphs (a), (b) and (c) of subsection 3.

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

31 (a) Take any action set forth in subsection 4 of NRS 40.680;

32 (b) Exercise any power set forth in Rule 53 of the Nevada Rules of Civil
33 Procedure; and

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

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

42 (a) Upon agreement of the parties; or

43 (b) With the prior approval of the court or special master.

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

48 10. Unless the parties agree otherwise, not less than 60 days before the
49 date of the mediation pursuant to paragraph (b) of subsection 4 is



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1 convened, the contractor shall make a written response to the claimant that
2 meets the requirements set forth in subsection 3 of NRS 40.645.

3 11. 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 in writing not more than 30 days after the date
6 the claimant receives the response.

7 12. The claimant shall respond to the written response of the contractor
8 within 45 days after the response of the contractor is mailed to the
9 claimant.

10 **Sec. 17.** NRS 40.688 is hereby amended to read as follows:

11 40.688 1. If a claimant attempts to sell a residence that is or has been
12 the subject of a claim governed by NRS 40.600 to 40.695, inclusive, *and*
13 *sections 2 to 11, inclusive, of this act or the subject of a notice given*
14 *pursuant to section 5 of this act*, he shall disclose, in writing, to any
15 prospective purchaser of the residence, not less than 30 days before the
16 close of escrow for the sale of the residence or, if escrow is to close less
17 than 30 days after the execution of the sales agreement, then immediately
18 upon the execution of the sales agreement or, if a claim is initiated *or a*
19 *notice is given* less than 30 days before the close of escrow, within 24
20 hours after giving written notice to the contractor pursuant to *section 5 of*
21 *this act*, subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682:

22 (a) All notices given by the claimant to the contractor pursuant to NRS
23 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this act* that
24 are related to the residence;

25 (b) All opinions the claimant has obtained from experts regarding a
26 constructional defect that is or has been the subject of the claim;

27 (c) The terms of any settlement, order or judgment relating to the claim;
28 and

29 (d) A detailed report of all repairs made to the residence by or on behalf
30 of the claimant as a result of a constructional defect that is or has been the
31 subject of the claim.

32 2. Before taking any action on a claim pursuant to NRS 40.600 to
33 40.695, inclusive, *and sections 2 to 11, inclusive, of this act or giving*
34 *notice pursuant to section 5 of this act*, the attorney for a claimant shall
35 notify the claimant in writing of the provisions of this section.

36 **Sec. 18.** NRS 40.692 is hereby amended to read as follows:

37 40.692 If, after complying with the procedural requirements of *section*
38 *5 of this act and* NRS 40.645 and 40.680, or NRS 40.682, a claimant
39 proceeds with an action for damages arising from a constructional defect:

40 1. The claimant and each contractor who is named in the original
41 complaint when the action is commenced are not required, while the action
42 is pending, to comply with the requirements of *section 5 of this act*, NRS
43 40.645 or 40.680, or NRS 40.682, for any constructional defect that the
44 claimant includes in an amended complaint, if the constructional defect:

45 (a) Is attributable, in whole or in part, to such a contractor;

46 (b) Is located on the same property described in the original complaint;
47 and

48 (c) Was not discovered before the action was commenced provided that
49 a good faith effort had been undertaken by the claimant.



1 2. The claimant is not required to give written notice of a defect
2 pursuant to subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682 to
3 any person who is joined to or intervenes in the action as a party after it is
4 commenced. If such a person becomes a party to the action:

5 (a) For the purposes of subsection 1 of NRS 40.645 or subsection 1 of
6 NRS 40.682, the person shall be deemed to have been given notice of the
7 defect by the claimant on the date on which the person becomes a party to
8 the action; and

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

11 **Sec. 19.** NRS 40.695 is hereby amended to read as follows:

12 40.695 1. Except as otherwise provided in subsection 2, statutes of
13 limitation or repose applicable to a claim based on a constructional defect
14 governed by NRS 40.600 to 40.695, inclusive, *and sections 2 to 11,*
15 *inclusive, of this act* are tolled from the time notice of the claim is given ~~to~~
16 *or notice of a defect, damage or injury is given pursuant to section 5 of*
17 *this act*, until 30 days after mediation is concluded or waived in writing
18 pursuant to NRS 40.680 or subsection 4 of NRS 40.682.

19 2. Tolling under this section applies ~~to~~

20 ~~—(a) Only to a claim that is not a complex matter.~~

21 ~~—(b) To~~ to a third party regardless of whether the party is required to
22 appear in the proceeding.

23 **Sec. 20.** Chapter 113 of NRS is hereby amended by adding thereto a
24 new section to read as follows:

25 1. *Each contractor who develops, constructs or landscapes a new*
26 *residence shall, within 30 days after the close of escrow of the initial*
27 *purchase of the residence, provide in writing to the initial purchaser of*
28 *the residence:*

29 (a) *The name, license number, business address and telephone*
30 *number of each subcontractor who performed any work related to the*
31 *development, construction or landscaping of the residence; and*

32 (b) *A brief description so the work performed by each subcontractor*
33 *identified pursuant to paragraph (a).*

34 2. *As used in this section, "subcontractor" has the meaning ascribed*
35 *to it in section 3 of this act.*

36 **Sec. 21.** Chapter 116 of NRS is hereby amended by adding thereto a
37 new section to read as follows:

38 1. *A person shall not provide or offer to provide anything of*
39 *monetary value to a property manager of an association or to a member*
40 *or officer of an executive board to induce the property manager, member*
41 *or officer to encourage or discourage the association to file a claim for*
42 *damages arising from a constructional defect.*

43 2. *A property manager shall not accept anything of value given to*
44 *him in exchange for encouraging or discouraging the association that he*
45 *manages to file a claim for damages arising from a constructional defect.*

46 3. *A member or officer of an executive board shall not accept*
47 *anything of value given to him in exchange for encouraging or*
48 *discouraging the association of which he is a member or officer of the*



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1 *executive board to file a claim for damages arising from a constructional*
2 *defect.*

3 *4. If a property manager violates the provisions of this section:*

4 *(a) The real estate division of the department of business and industry*
5 *shall suspend or revoke his permit to engage in property management*
6 *issued pursuant to chapter 645 of NRS, if he has been issued such a*
7 *permit; and*

8 *(b) The real estate commission shall suspend or revoke his certificate*
9 *issued pursuant to NRS 116.31139, if he has been issued such a*
10 *certificate.*

11 *5. If a member or officer of an executive board violates the*
12 *provisions of this section, the executive board shall remove the officer or*
13 *member from the board.*

14 *6. Any person who willfully violates the provisions of this section is*
15 *guilty of a misdemeanor.*

16 *7. As used in this section, "constructional defect" has the meaning*
17 *ascribed to it in NRS 40.615.*

18 **Sec. 22.** NRS 116.1203 is hereby amended to read as follows:

19 116.1203 1. Except as otherwise provided in subsection 2, if a
20 planned community contains no more than 12 units and is not subject to
21 any developmental rights, it is subject only to NRS 116.1105, 116.1106
22 and 116.1107 unless the declaration provides that this entire chapter is
23 applicable.

24 2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138,
25 ~~NRS~~ 116.3101 to 116.3119, *and section 21 of this act* inclusive, and
26 116.110305 to 116.110393, inclusive, to the extent necessary in construing
27 any of those sections, apply to a residential planned community containing
28 more than six units.

29 **Sec. 23.** NRS 116.31139 is hereby amended to read as follows:

30 116.31139 1. An association may employ a person engaged in
31 property management for the common-interest community.

32 2. Except as otherwise provided in this section, a person engaged in
33 property management for a common-interest community must:

34 (a) Hold a permit to engage in property management that is issued
35 pursuant to the provisions of chapter 645 of NRS; or

36 (b) Hold a certificate issued by the real estate commission pursuant to
37 subsection 3.

38 3. The real estate commission shall provide by regulation for the
39 issuance of certificates for the management of common-interest
40 communities to persons who are not otherwise authorized to engage in
41 property management pursuant to the provisions of chapter 645 of NRS.
42 The regulations:

43 (a) Must establish the qualifications for the issuance of such a
44 certificate, including the education and experience required to obtain such
45 a certificate;

46 (b) May require applicants to pass an examination in order to obtain a
47 certificate;

48 (c) Must establish standards of practice for persons engaged in property
49 management for a common-interest community;



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1 (d) Must establish the grounds for initiating disciplinary action against a
2 person to whom a certificate has been issued, including, without limitation,
3 the grounds for placing conditions, limitations or restrictions on a
4 certificate and for the suspension or revocation of a certificate; and

5 (e) Must establish rules of practice and procedure for conducting
6 disciplinary hearings.

7 The real estate division of the department of business and industry may
8 investigate the property managers to whom certificates have been issued to
9 ensure their compliance with *section 21 of this act and* the standards of
10 practice adopted pursuant to this subsection and collect a fee for the
11 issuance of a certificate by the commission in an amount not to exceed the
12 administrative costs of issuing the certificate.

13 4. The provisions of subsection 2 do not apply to:

14 (a) A person who is engaged in property management for a common-
15 interest community on October 1, 1999, and is granted an exemption from
16 the requirements of subsection 2 by the administrator upon demonstration
17 that he is qualified and competent to engage in property management for a
18 common-interest community.

19 (b) A financial institution.

20 (c) An attorney licensed to practice in this state.

21 (d) A trustee.

22 (e) An employee of a corporation who manages only the property of the
23 corporation.

24 (f) A declarant.

25 (g) A receiver.

26 5. As used in this section, “property management” means the physical,
27 administrative or financial maintenance and management of real property,
28 or the supervision of those activities for a fee, commission or other
29 compensation or valuable consideration.

30 **Sec. 24.** NRS 116.3115 is hereby amended to read as follows:

31 116.3115 1. Until the association makes an assessment for common
32 expenses, the declarant shall pay all common expenses. After an
33 assessment has been made by the association, assessments must be made at
34 least annually, based on a budget adopted at least annually by the
35 association in accordance with the requirements set forth in NRS
36 116.31151. Except for an association for a time-share project governed by
37 the provisions of chapter 119A of NRS, and unless the declaration imposes
38 more stringent standards, the budget must include a budget for the daily
39 operation of the association and the money for the reserve required by
40 paragraph (b) of subsection 2.

41 2. Except for assessments under subsections 4 to 7, inclusive:

42 (a) All common expenses, including a reserve, must be assessed against
43 all the units in accordance with the allocations set forth in the declaration
44 pursuant to subsections 1 and 2 of NRS 116.2107.

45 (b) The association shall establish an adequate reserve, funded on a
46 reasonable basis, for the repair, replacement and restoration of the major
47 components of the common elements. The reserve may be used only for
48 those purposes, including, without limitation, repairing, replacing and



1 restoring roofs, roads and sidewalks, and must not be used for daily
2 maintenance.

3 3. Any past due assessment for common expenses or installment
4 thereof bears interest at the rate established by the association not
5 exceeding 18 percent per year.

6 4. To the extent required by the declaration:

7 (a) Any common expense associated with the maintenance, repair,
8 restoration or replacement of a limited common element must be assessed
9 against the units to which that limited common element is assigned,
10 equally, or in any other proportion the declaration provides;

11 (b) Any common expense or portion thereof benefiting fewer than all of
12 the units must be assessed exclusively against the units benefited; and

13 (c) The costs of insurance must be assessed in proportion to risk and the
14 costs of utilities must be assessed in proportion to usage.

15 5. Assessments to pay a judgment against the association may be made
16 only against the units in the common-interest community at the time the
17 judgment was entered, in proportion to their liabilities for common
18 expenses.

19 6. If any common expense is caused by the misconduct of any unit's
20 owner, the association may assess that expense exclusively against his unit.

21 7. The association of a common-interest community created before
22 January 1, 1992, is not required to make an assessment against a vacant lot
23 located within the community that is owned by the declarant.

24 8. If liabilities for common expenses are reallocated, assessments for
25 common expenses and any installment thereof not yet due must be
26 recalculated in accordance with the reallocated liabilities.

27 9. The association shall provide written notice to the owner of each
28 unit of a meeting at which an assessment for a capital improvement or the
29 commencement of a civil action is to be considered or action is to be taken
30 on such an assessment at least 21 calendar days before the meeting. Except
31 as otherwise provided in this subsection, the association may commence a
32 civil action only upon a vote or written agreement of the owners of units to
33 which at least a majority of the votes of the members of the association are
34 allocated. The provisions of this subsection do not apply to a civil action
35 that is commenced:

36 (a) By an association for a time-share project governed by the
37 provisions of chapter 119A of NRS;

38 (b) To enforce the payment of an assessment;

39 (c) To enforce the declaration, bylaws or rules of the association;

40 (d) To proceed with a counterclaim; or

41 (e) To protect the ~~health, safety and welfare of the members of the~~
42 ~~association.~~ *action against the running of the statute of limitations or*
43 *repose.* If a civil action is commenced pursuant to this paragraph without

44 the required vote or agreement, the action must be ratified within 90 days
45 after the commencement of the action by a vote or written agreement of the
46 owners of the units to which at least a majority of votes of the members of
47 the association are allocated. If the association, after making a good faith
48 effort, cannot obtain the required vote or agreement to commence or ratify
49 such a civil action, the association may thereafter seek to dismiss the action



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1 without prejudice for that reason only if a vote or written agreement of the
2 owners of the units to which at least a majority of votes of the members of
3 the association are allocated was obtained at the time the approval to
4 commence or ratify the action was sought.

5 10. At least 10 days before an association commences or seeks to
6 ratify the commencement of a civil action, the association shall provide a
7 written statement to all units' owners that includes:

8 (a) A reasonable estimate of the costs of the civil action, including
9 reasonable attorney's fees;

10 (b) An explanation of the potential benefits of the civil action and the
11 potential adverse consequences if the association does not commence the
12 action or if the outcome of the action is not favorable to the association;
13 and

14 (c) All disclosures that are required to be made upon the sale of the
15 property.

16 11. No person other than a unit's owner may request the dismissal of a
17 civil action commenced by the association on the ground that the
18 association failed to comply with any provision of this section.

19 **Sec. 25.** NRS 119A.165 is hereby amended to read as follows:

20 119A.165 1. If a matter governed by this chapter is also governed by
21 chapter 116 of NRS, compliance with the provisions of chapter 116 of
22 NRS governing the matter which are in addition to or different from the
23 provisions in this chapter governing the same matter is not required. In the
24 event of a conflict between provisions of this chapter and chapter 116 of
25 NRS, the provisions of this chapter prevail.

26 2. Without limiting the generality of subsection 1, the provisions of
27 NRS 116.11145, 116.12065, 116.3103, 116.31031, 116.31034, 116.3106,
28 116.31065, 116.3108 to 116.311, inclusive, 116.31139, 116.31145 to
29 116.31158, inclusive, 116.31162, 116.31175, 116.31177, 116.41095 and
30 116.4117 *and section 21 of this act* do not apply to a time share or a time-
31 share project.

32 **Sec. 26.** The amendatory provisions of this act do not apply to a claim
33 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
34 inclusive, and sections 2 to 11, inclusive, of this act, unless the claim was
35 initiated or the action was commenced on or after October 1, 2001.

