

ASSEMBLY BILL NO. 366—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 14, 2001

Referred to Committee on Judiciary

SUMMARY—Revises various provisions governing claims and transactions relating to real property. (BDR 10-911)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

AN ACT relating to real property; requiring disclosures of certain information by the seller of a new residence; providing for the tolling of statutes of limitation and repose for certain causes of action relating to real property in certain circumstances; specifying that a claim for a constructional defect does not limit, preclude or abate disciplinary action against a contractor; revising provisions governing the recovery of damages in a constructional defect matter; 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 113 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 ***1. At the time the initial purchaser signs a contract for the purchase***
4 ***and sale of a previously unsold residence, the seller shall disclose to the***
5 ***purchaser in writing:***
6 ***(a) The terms of any settlement, order or judgment relating to a claim***
7 ***or action for a constructional defect pursuant to NRS 40.600 to 40.695,***
8 ***inclusive, or concerning a sale of real property pursuant to this chapter***
9 ***which has been asserted against a person who participated in any***
10 ***manner in the development, construction or sale of the residence;***
11 ***(b) A description of any complaint filed with the state contractors'***
12 ***board relating to a constructional defect pursuant to NRS 40.600 to***
13 ***40.695, inclusive, or concerning a sale of real property pursuant to this***
14 ***chapter which has been asserted against a person who participated in***
15 ***any manner in the development, construction or sale of the residence and***
16 ***the disposition of any such complaint;***
17 ***(c) A summary of any insurance policies carried by the seller that***
18 ***provide coverage for the repair of a constructional defect in the***
19 ***residence;***



1 (d) To the extent that the information is not otherwise provided to a
2 purchaser pursuant to NRS 624.600, the name, license number, business
3 address and telephone number of each person who participated in any
4 manner in the development, construction or sale of the residence; and

5 (e) A statement describing any deviation from any applicable building
6 code in effect at the time of the development or construction of the
7 residence. As used in this paragraph, "building code" means ordinances,
8 plans, regulations or rulings adopted by a governmental body to regulate
9 and specify the soundness of construction of structures.

10 2. A seller who fails substantially to comply with the requirements of
11 subsection 1 is liable for a civil penalty of \$1,000 which is payable to the
12 state contractors' board for deposit in the account established pursuant
13 to NRS 624.470.

14 3. The civil penalty provided for in this section is in addition to any
15 other remedy or penalty provided by law.

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

18 **Sec. 2.** Chapter 11 of NRS is hereby amended by adding thereto a new
19 section to read as follows:

20 1. The statutes of limitation or repose set forth in chapter 11 of NRS
21 which are applicable to an action described in NRS 11.203, 11.204 or
22 11.205 are tolled during any period after the substantial completion of an
23 improvement to real property in which the person who performed or
24 furnished the design, planning, supervision or observation of the
25 construction, or the construction of an improvement, including, without
26 limitation, a residence or an improvement within a common-interest
27 community:

28 (a) Owned or otherwise controlled the improvement or the common-
29 interest community;

30 (b) Performed or furnished repairs to the improvement; or

31 (c) Agreed to perform or furnish repairs to the improvement,
32 regardless of whether the person:

33 (1) Actually performed or furnished the repairs; or

34 (2) Owned or otherwise controlled the improvement or the
35 common-interest community at the time he agreed to perform or furnish
36 the repairs.

37 2. The provisions of this section do not apply to a cause of action
38 against an owner or occupier of real property who did not perform or
39 furnish the design, planning, supervision or observation of the
40 construction, or the construction of an improvement to real property.

41 3. As used in this section:

42 (a) "Common-interest community" means any real property that is
43 subject to the provisions of chapter 116 or 117 of NRS.

44 (b) "Residence" means any real property that is subject to the
45 provisions of NRS 40.600 to 40.695, inclusive.

46 **Sec. 3.** NRS 11.203 is hereby amended to read as follows:

47 11.203 1. Except as otherwise provided in NRS 11.202 and 11.206,
48 and section 2 of this act, no action may be commenced against the owner,
49 occupier or any person performing or furnishing the design, planning,



* A B 3 6 6 *

1 supervision or observation of construction, or the construction of an
2 improvement to real property more than 10 years after the substantial
3 completion of such an improvement, for the recovery of damages for:

4 (a) Any deficiency in the design, planning, supervision or observation
5 of construction or the construction of such an improvement which is
6 known or through the use of reasonable diligence should have been known
7 to him;

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

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

11 2. Notwithstanding the provisions of NRS 11.190 and subsection 1 of
12 this section, if an injury occurs in the 10th year after the substantial
13 completion of such an improvement, an action for damages for injury to
14 property or person, damages for wrongful death resulting from such injury
15 or damages for breach of contract may be commenced within 2 years after
16 the date of such injury, irrespective of the date of death, but in no event
17 may an action be commenced more than 12 years after the substantial
18 completion of the improvement.

19 3. The provisions of this section do not apply to a claim for indemnity
20 or contribution.

21 **Sec. 4.** NRS 11.204 is hereby amended to read as follows:

22 11.204 1. Except as otherwise provided in NRS 11.202, 11.203 and
23 11.206, *and section 2 of this act*, no action may be commenced against the
24 owner, occupier or any person performing or furnishing the design,
25 planning, supervision or observation of construction, or the construction ~~of~~
26 of an improvement to real property more than 8 years after the substantial
27 completion of such an improvement, for the recovery of damages for:

28 (a) Any latent deficiency in the design, planning, supervision or
29 observation of construction or the construction of such an improvement;

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

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

33 2. Notwithstanding the provisions of NRS 11.190 and subsection 1 of
34 this section, if an injury occurs in the eighth year after the substantial
35 completion of such an improvement, an action for damages for injury to
36 property or person, damages for wrongful death resulting from such injury
37 or damages for breach of contract may be commenced within 2 years after
38 the date of such injury, irrespective of the date of death, but in no event
39 may an action be commenced more than 10 years after the substantial
40 completion of the improvement.

41 3. The provisions of this section do not apply to a claim for indemnity
42 or contribution.

43 4. For the purposes of this section, "latent deficiency" means a
44 deficiency which is not apparent by reasonable inspection.

45 **Sec. 5.** NRS 11.205 is hereby amended to read as follows:

46 11.205 1. Except as otherwise provided in NRS 11.202, 11.203 and
47 11.206, *and section 2 of this act*, no action may be commenced against the
48 owner, occupier or any person performing or furnishing the design,
49 planning, supervision or observation of construction, or the construction of



1 an improvement to real property more than 6 years after the substantial
2 completion of such an improvement, for the recovery of damages for:

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

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

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

8 2. Notwithstanding the provisions of NRS 11.190 and subsection 1 of
9 this section, if an injury occurs in the sixth year after the substantial
10 completion of such an improvement, an action for damages for injury to
11 property or person, damages for wrongful death resulting from such injury
12 or damages for breach of contract may be commenced within 2 years after
13 the date of such injury, irrespective of the date of death, but in no event
14 may an action be commenced more than 8 years after the substantial
15 completion of the improvement.

16 3. The provisions of this section do not apply to a claim for indemnity
17 or contribution.

18 4. For the purposes of this section, "patent deficiency" means a
19 deficiency which is apparent by reasonable inspection.

20 **Sec. 6.** NRS 11.2055 is hereby amended to read as follows:

21 11.2055 1. Except as otherwise provided in subsection 2, for the
22 purposes of NRS 11.202 to 11.206, inclusive, *and section 2 of this act*, the
23 date of substantial completion of an improvement to real property shall be
24 deemed to be the date on which:

25 (a) The final building inspection of the improvement is conducted;

26 (b) A notice of completion is issued for the improvement; or

27 (c) A certificate of occupancy is issued for the
28 improvement,
29 whichever occurs later.

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

33 **Sec. 7.** NRS 40.635 is hereby amended to read as follows:

34 40.635 NRS 40.600 to 40.695, inclusive:

35 1. Apply to any claim that arises before, on or after July 1, 1995, as the
36 result of a constructional defect, except a claim for personal injury or
37 wrongful death, if the claim is the subject of an action commenced on or
38 after July 1, 1995.

39 2. Prevail over any conflicting law otherwise applicable to the claim or
40 cause of action.

41 3. Do not bar or limit any defense otherwise available except as
42 otherwise provided in those sections.

43 4. Do not create a new theory upon which liability may be based.

44 **5. Do not limit, preclude or abate a disciplinary proceeding against a**
45 **contractor pursuant to chapter 624 of NRS.**

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

47 40.655 1. Except as otherwise provided in NRS 40.650, in a claim
48 governed by NRS 40.600 to 40.695, inclusive, the claimant may recover



* A B 3 6 6 *

- 1 only the following damages to the extent proximately caused by a
2 constructional defect:
- 3 (a) Any reasonable attorney's fees;
- 4 (b) The reasonable cost of any repairs already made that were necessary
5 and of any repairs yet to be made that are necessary to cure any
6 constructional defect that the contractor failed to cure and the reasonable
7 expenses of temporary housing reasonably necessary during the repair;
- 8 (c) The reduction in market value of the residence or accessory
9 structure, if any, to the extent the reduction is because of structural failure;
- 10 (d) *The reduction in market value of the residence or accessory*
11 *structure, if any, to the extent the reduction is the result of a disclosure*
12 *required pursuant to NRS 40.688;*
- 13 (e) The loss of the use of all or any part of the residence;
- 14 ~~(e)~~ (f) The reasonable value of any other property damaged by the
15 constructional defect;
- 16 ~~(f)~~ (g) Any additional costs reasonably incurred by the claimant,
17 including, but not limited to, any costs and fees incurred for the retention
18 of experts to:
- 19 (1) Ascertain the nature and extent of the constructional defects;
- 20 (2) Evaluate appropriate corrective measures to estimate the value of
21 loss of use; and
- 22 (3) Estimate the value of loss of use, the cost of temporary housing
23 and the reduction of market value of the residence; and
- 24 ~~(e)~~ (h) Any interest provided by statute.
- 25 2. The amount of any attorney's fees awarded pursuant to this section
26 must be approved by the court.
- 27 3. ~~HH~~ *Except as otherwise provided in NRS 11.202 and chapter 116*
28 *of NRS, if* a contractor complies with the provisions of NRS 40.600 to
29 40.695, inclusive, the claimant may not recover from the contractor, as a
30 result of the constructional defect, anything other than that which is
31 provided pursuant to NRS 40.600 to 40.695, inclusive.
- 32 4. As used in this section, "structural failure" means physical damage
33 to the load-bearing portion of a residence or appurtenance caused by a
34 failure of the load-bearing portion of the residence or appurtenance.
- 35 **Sec. 9.** NRS 624.300 is hereby amended to read as follows:
- 36 624.300 1. Except as otherwise provided in subsection 3, the board
37 may:
- 38 (a) Suspend or revoke licenses already issued;
- 39 (b) Refuse renewals of licenses;
- 40 (c) Impose limits on the field, scope and monetary limit of the license;
- 41 (d) Impose an administrative fine of not more than \$10,000;
- 42 (e) Order a licensee to repay to the account established pursuant to NRS
43 624.470, any amount paid out of the account pursuant to NRS 624.510 as a
44 result of an act or omission of that licensee;
- 45 (f) Order the licensee to take action to correct a condition resulting from
46 an act which constitutes a cause for disciplinary action, at the licensee's
47 cost, that may consist of requiring the licensee to:
- 48 (1) Perform the corrective work himself;
- 49 (2) Hire and pay another licensee to perform the corrective work; or



* A B 3 6 6 *

1 (3) Pay to the owner of the construction project a specified sum to
2 correct the condition; or
3 (g) Reprimand or take other less severe disciplinary action, including,
4 without limitation, increasing the amount of the surety bond or cash deposit
5 of the licensee,
6 if the licensee commits any act which constitutes a cause for disciplinary
7 action.
8 2. If the board suspends or revokes the license of a contractor for
9 failure to establish financial responsibility, the board may, in addition to
10 any other conditions for reinstating or renewing the license, require that
11 each contract undertaken by the licensee for a period to be designated by
12 the board, not to exceed 12 months, be separately covered by a bond or
13 bonds approved by the board and conditioned upon the performance of and
14 the payment of labor and materials required by the contract.
15 3. If a licensee violates the provisions of NRS 624.3014 or subsection
16 3 of NRS 624.3015, the board may impose an administrative fine of not
17 more than \$20,000.
18 4. If a licensee commits a fraudulent act which is a cause for
19 disciplinary action under NRS 624.3016, the correction of any condition
20 resulting from the act does not preclude the board from taking disciplinary
21 action.
22 5. If the board finds that a licensee has engaged in repeated acts that
23 would be cause for disciplinary action, the correction of any resulting
24 conditions does not preclude the board from taking disciplinary action
25 pursuant to this section.
26 6. The expiration of a license by operation of law or by order or
27 decision of the board or a court, or the voluntary surrender of a license by a
28 licensee, does not deprive the board of jurisdiction to proceed with any
29 investigation of, or action or disciplinary proceeding against, the licensee
30 or to render a decision suspending or revoking the license.
31 7. *A claim or action pursuant to NRS 40.600 to 40.695, inclusive,*
32 *against a licensee does not:*
33 *(a) Preclude or limit the board from taking disciplinary action*
34 *pursuant to this section; or*
35 *(b) Deprive the board of jurisdiction to proceed with any investigation*
36 *of, or action or disciplinary proceeding against, the licensee or to render*
37 *a decision suspending or revoking the license of a licensee.*
38 8. If discipline is imposed pursuant to this section, including any
39 discipline imposed pursuant to a stipulated settlement, the costs of the
40 proceeding, including investigative costs and attorney's fees, may be
41 recovered by the board.
42 **Sec. 10.** NRS 624.3016 is hereby amended to read as follows:
43 624.3016 The following acts or omissions, among others, constitute
44 cause for disciplinary action ~~under~~ *pursuant to* NRS 624.300:
45 1. Any fraudulent or deceitful act committed in the capacity of a
46 contractor.
47 2. A conviction of a violation of NRS 624.730 or a felony or a crime
48 involving moral turpitude.



1 3. Knowingly making a false statement in or relating to the recording
2 of a notice of lien pursuant to the provisions of NRS 108.226.
3 4. Failure to give a notice required by NRS 108.245 or 108.246.
4 5. Failure to comply with NRS 597.713, 597.716 or 597.719 or any
5 regulations of the board governing contracts for the construction of
6 residential pools and spas.
7 6. Failure to comply with NRS 624.600 ~~H~~ *or section 1 of this act.*
8 7. Misrepresentation or the omission of a material fact, or the
9 commission of any other fraudulent or deceitful act, to obtain a license.
10 8. Failure to pay *a civil penalty imposed pursuant to section 1 of this*
11 *act or* an assessment required pursuant to NRS 624.470.
12 **Sec. 11.** NRS 624.470 is hereby amended to read as follows:
13 624.470 1. Except as otherwise provided in subsection 3, in addition
14 to the annual fee for a license required pursuant to NRS 624.280, a
15 residential contractor shall pay to the board an annual assessment in the
16 following amount, if the monetary limit on his license is:
17 Not more than \$1,000,000 \$100
18 More than \$1,000,000 but limited 250
19 Unlimited 500
20 2. The board shall administer and account separately for the money
21 received from the annual assessments collected pursuant to subsection 1 ~~H~~
22 *and from any money collected from civil penalties imposed pursuant to*
23 *section 1 of this act.* The board may refer to the money in the account as
24 the "recovery fund."
25 3. The board shall suspend the collection of assessments pursuant to
26 subsection 1 when the balance in the account *from assessments* reaches
27 150 percent of the largest balance in the account *from assessments* during
28 the previous fiscal year.
29 4. Except as otherwise provided in NRS 624.540, the money in the
30 account must be used to pay claims made by owners who are damaged by
31 the failure of a residential contractor to perform qualified services
32 adequately, as provided in NRS 624.400 to 624.560, inclusive.
33 **Sec. 12.** 1. The amendatory provisions of section 1 of this act do not
34 apply to a contract or agreement for the purchase and sale of a previously
35 unsold residence entered into before October 1, 2001.
36 2. The amendatory provisions of sections 2 to 8, inclusive, of this act
37 do not apply to an action filed before October 1, 2001.

