

ASSEMBLY BILL NO. 477—ASSEMBLYMAN DINI

MARCH 19, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Revises procedures for resolving matters involving constructional defects. (BDR 54-1250)

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

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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 present a claim of constructional defect to the state contractors' board for review and investigation before commencing an action based upon the claim; revising provisions governing the duties of the state contractors' board to require the board to review and investigate claims of constructional defects; revising the definition of a constructional defect; eliminating mandatory mediation in cases involving a constructional defect; and providing other matters properly relating thereto.

- 1 WHEREAS, The State of Nevada is the fastest growing state in the
- 2 nation; and
- 3 WHEREAS, As a result, Nevada is experiencing an increase in new home
- 4 construction to meet the demands of its increasing population; and
- 5 WHEREAS, Every resident of this state deserves to live in a safe home
- 6 that is free from hazardous defects; and
- 7 WHEREAS, On occasion, during the course of new home construction,
- 8 mistakes may be made resulting in construction defects; and
- 9 WHEREAS, The legislature wishes to encourage builders to repair
- 10 identified construction defects in a timely and responsible manner; and
- 11 WHEREAS, To accomplish this goal, homeowners need to cooperate and
- 12 allow builders an opportunity to repair identified defects; and
- 13 WHEREAS, The legislature further wishes to encourage homeowners and
- 14 builders to resolve allegations of construction defects in a manner which
- 15 avoids litigating in an overburdened court system; now, therefore,
- 16
- 17 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
- 18 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
- 19
- 20 **Section 1.** Chapter 624 of NRS is hereby amended by adding thereto
- 21 the provisions set forth as sections 2 to 11, inclusive, of this act.



1 **Sec. 2.** *As used in sections 2 to 11, inclusive, of this act, unless the*
2 *context otherwise requires, the words and terms defined in sections 3, 4*
3 *and 5 of this act have the meanings ascribed to them in those sections.*
4 **Sec. 3.** *“Claimant” has the meaning ascribed to it in NRS 40.610.*
5 **Sec. 4.** *“Constructional defect” has the meaning ascribed to it in*
6 *NRS 40.615.*
7 **Sec. 5.** *“Contractor” has the meaning ascribed to it in NRS 40.620.*
8 **Sec. 6.** 1. *The board shall review each claim of a constructional*
9 *defect submitted to it pursuant to NRS 40.680.*
10 2. *A claim of a constructional defect is properly presented to the*
11 *board by submitting a copy of the written notice of constructional defects*
12 *provided to a contractor by a claimant pursuant to subsection 1 of NRS*
13 *40.645 or subsection 1 of NRS 40.682.*
14 3. *After a claimant has presented a claim to the board pursuant to*
15 *subsection 2, a contractor shall immediately provide a copy of his*
16 *response to the claimant’s written notice of defects that he prepared*
17 *pursuant to NRS 40.645 or 40.682, as applicable, to the board.*
18 4. *The board shall investigate each claim submitted to the board*
19 *pursuant to subsection 1. The investigation must be completed within 30*
20 *days after the claim is submitted to the board pursuant to subsection 2.*
21 5. *Upon completion of the investigation, the board shall issue an*
22 *advisory opinion concerning the claim of a constructional defect not*
23 *later than 2 weeks after the investigation is completed.*
24 **Sec. 7.** *As part of the investigation conducted pursuant to section 6*
25 *of this act, the board may hold a hearing on a claim of a constructional*
26 *defect submitted to the board pursuant to section 6 of this act after giving*
27 *notice of the time, place and nature of the hearing:*
28 1. *If the board, in its discretion, determines that a hearing is*
29 *necessary; or*
30 2. *Upon the written request of either party to the claim.*
31 **Sec. 8.** 1. *If the board issues an advisory opinion pursuant to*
32 *section 6 of this act that is, at least in part, favorable to the claimant, the*
33 *board may order the contractor to:*
34 (a) *Make repairs at the contractor’s expense, if the contractor is*
35 *licensed to make the repairs; or*
36 (b) *Cause the repairs to be made, at the contractor’s expense, by*
37 *another contractor who is licensed to make the repairs, bonded and*
38 *insured.*
39 2. *Except as otherwise provided in subsection 4, any repairs ordered*
40 *pursuant to this section must be completed within the time provided by*
41 *the board in the order.*
42 3. *A copy of the order must be served on each party to the claim*
43 *personally, or by registered or certified mail. The order is effective upon*
44 *such service, unless the board orders otherwise.*
45 4. *A contractor may petition the board, by written request supported*
46 *by an affidavit of the contractor, for an extension of the time for*
47 *completion of repairs if completion is delayed by the claimant or by other*
48 *events beyond the control of the contractor, or if timely completion of the*
49 *repairs is not reasonably possible.*



1 5. *An order of the board pursuant to this section is a final order as to*
2 *the contractor for the purpose of judicial review.*
3 6. *If the board orders a contractor to make repairs or cause repairs*
4 *to be made pursuant to this section, the claimant shall, upon reasonable*
5 *notice from the contractor, allow the contractor reasonable access to the*
6 *residence or appurtenance to make repairs or cause the repairs to be*
7 *made.*
8 7. *If a claimant prevents a contractor from making repairs which*
9 *have been ordered by the board pursuant to this section, the claimant*
10 *may not recover damages in any subsequent action filed pursuant to NRS*
11 *40.680:*
12 (a) *Associated with the defect that the contractor was prevented from*
13 *repairing; or*
14 (b) *For damage to other parts of the residence or appurtenance that is*
15 *the proximate result of the refusal of the claimant to allow a contractor*
16 *to make repairs pursuant to this section.*
17 8. *As used in this section:*
18 (a) *“Appurtenance” has the meaning ascribed to it in NRS 40.605.*
19 (b) *“Residence” has the meaning ascribed to it in NRS 40.630.*
20 Sec. 9. *The board shall adopt regulations to carry out the provisions*
21 *of sections 2 to 11, inclusive, of this act that must include, without*
22 *limitation:*
23 1. *The standards to be used in reviewing a claim of a constructional*
24 *defect;*
25 2. *The form in which the advisory opinion of the board concerning a*
26 *claim will be issued;*
27 3. *The procedures which the parties to a claim and the board must*
28 *follow during the review process, that are consistent with the provisions*
29 *of chapter 233B of NRS; and*
30 4. *Any other rules and procedures reasonably necessary for the*
31 *board to carry out its duties pursuant to sections 2 to 11, inclusive, of this*
32 *act.*
33 Sec. 10. *An advisory opinion and any order of the board requiring a*
34 *contractor to make repairs or cause repairs to be made are admissible in*
35 *any action concerning the claim of a constructional defect that is*
36 *subsequently filed in district court. No other evidence concerning the*
37 *board or its deliberations is admissible, and no member of the board may*
38 *be called to testify in any such action.*
39 Sec. 11. *The board and its members acting pursuant to sections 2 to*
40 *11, inclusive, of this act are immune from any civil liability for any*
41 *decision or action taken in good faith and without malicious intent in*
42 *response to a claim submitted to the board.*
43 Sec. 12. NRS 624.020 is hereby amended to read as follows:
44 624.020 1. ~~For the purpose of~~ *As used in this chapter, “contractor”*
45 *is synonymous with “builder.”*
46 ~~2. Within the meaning of this chapter, a contractor is~~ *unless the*
47 *context otherwise requires, “contractor”:*
48 (a) *Means any person, except a registered architect or a licensed*
49 *professional engineer, acting solely in his professional capacity, who in any*



1 capacity other than as the employee of another with wages as the sole
2 compensation, undertakes to, or offers to undertake to, or purports to have
3 the capacity to undertake to, or submits a bid to, or does himself or by or
4 through others, construct, alter, repair, add to, subtract from, improve,
5 move, wreck or demolish any building, highway, road, railroad, excavation
6 or other structure, project, development or improvement, or to do any part
7 thereof, including the erection of scaffolding or other structures or works in
8 connection therewith.

9 *(b) Is synonymous with "builder."*

10 2. Evidence of the securing of any permit from a governmental agency
11 or the employment of any person on a construction project must be
12 accepted by the board or any court of this state as prima facie evidence that
13 the person securing that permit or employing any person on a construction
14 project is acting in the capacity of a contractor pursuant to the provisions of
15 this chapter.

16 3. A contractor ~~{within the meaning of this chapter}~~ includes :

17 (a) A subcontractor or specialty contractor, but does not include anyone
18 who merely furnishes materials or supplies without fabricating them into,
19 or consuming them in the performance of, the work of a contractor.

20 ~~{4. — A contractor within the meaning of this chapter includes a}~~

21 (b) A construction manager who performs management and counseling
22 services on a construction project for a professional fee.

23 **Sec. 13.** NRS 624.302 is hereby amended to read as follows:

24 624.302 The following acts or omissions, among others, constitute
25 cause for disciplinary action pursuant to NRS 624.300:

26 1. Contracting, offering to contract or submitting a bid as a contractor
27 if the contractor's license:

28 (a) Has been suspended or revoked pursuant to NRS 624.300; or

29 (b) Is inactive.

30 2. Failure to comply with a written citation issued pursuant to NRS
31 624.341 within the time permitted for compliance set forth in the citation
32 ~~{}~~ or, if a hearing is held pursuant to NRS 624.291, within 15 business
33 days after the hearing.

34 3. Except as otherwise provided in subsection 2, failure to pay an
35 administrative fine imposed pursuant to this chapter within 30 days after:

36 (a) Receiving notice of the imposition of the fine; or

37 (b) The final administrative or judicial decision affirming the imposition
38 of the fine,

39 whichever occurs later.

40 4. The suspension, revocation or other disciplinary action taken by
41 another state against a contractor based on a license issued by that state if
42 the contractor is licensed in this state or applies for a license in this state. A
43 certified copy of the suspension, revocation or other disciplinary action
44 taken by another state against a contractor based on a license issued by that
45 state is conclusive evidence of that action.

46 5. Failure or refusal to respond to a written request from the board or
47 its designee to cooperate in the investigation of a complaint.



1 6. Failure or refusal to comply with a written request by the board or
2 its designee for information or records, or obstructing or delaying the
3 providing of such information or records.

4 **7. Failure or refusal to comply with a written order issued pursuant**
5 **to section 8 of this act within the time required for completion of repairs**
6 **set forth in the order.**

7 **Sec. 14.** NRS 40.615 is hereby amended to read as follows:
8 40.615 "Constructional defect" ~~includes a defect in the design,~~
9 ~~construction, manufacture, repair or landscaping of a new residence, of an~~
10 ~~alteration of or addition to an existing residence, or of an appurtenance.~~
11 ~~The term includes physical damage to the~~ **means a condition that**
12 **materially affects the value or use of a** residence, an appurtenance or the
13 real property to which the residence or appurtenance is affixed ~~that is~~
14 ~~proximately caused by a constructional defect.~~ **in an adverse manner.**

15 **Sec. 15.** NRS 40.635 is hereby amended to read as follows:
16 40.635 NRS 40.600 to 40.695, inclusive ~~is~~ **, and sections 2 to 11,**
17 **inclusive, of this act:**

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

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

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

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

27 **Sec. 16.** NRS 40.645 is hereby amended to read as follows:

28 40.645 Except as otherwise provided in this section and NRS 40.670:

29 1. For a claim that is not a complex matter, ~~at least 60 days~~ before a
30 claimant **submits a claim of a constructional defect to the state**
31 **contractors' board for review pursuant to NRS 40.680 and sections 2 to**
32 **11, inclusive, of this act and before a claimant** commences an action
33 against a contractor for damages arising from a constructional defect, the
34 claimant must give written notice by certified mail, return receipt
35 requested, to the contractor, at the contractor's last known address,
36 specifying in reasonable detail the defects or any damages or injuries to
37 each residence or appurtenance that is the subject of the claim. The notice
38 must describe in reasonable detail the cause of the defects if the cause is
39 known, the nature and extent that is known of the damage or injury
40 resulting from the defects and the location of each defect within each
41 residence or appurtenance to the extent known. An expert opinion
42 concerning the cause of the defects and the nature and extent of the damage
43 or injury resulting from the defects based on a representative sample of the
44 components of the residences and appurtenances involved in the action
45 satisfies the requirements of this section. During the 45-day period after the
46 contractor receives the notice, on his written request, the contractor ~~is~~
47 ~~entitled to~~ **may** inspect the property that is the subject of the claim to
48 determine the nature and cause of the defect, damage or injury and the
49 nature and extent of repairs necessary to remedy the defect. The contractor



1 shall, before making the inspection, provide reasonable notice of the
2 inspection and shall make the inspection at a reasonable time. The
3 contractor may take reasonable steps to establish the existence of the
4 defect.

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

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

11 (a) Must be served to the claimant by certified mail, return receipt
12 requested, at the claimant’s last known address.

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

19 (c) May include:

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

22 (2) If the contractor or his subcontractor is licensed to make the
23 repairs, an agreement by the contractor or subcontractor to make the
24 repairs.

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

28 The repairs must be made within 45 days after the contractor receives
29 written notice of acceptance of the response, unless completion is delayed
30 by the claimant or by other events beyond the control of the contractor, or
31 timely completion of the repairs is not reasonably possible. The claimant
32 and the contractor may agree in writing to extend the periods prescribed by
33 this section.

34 4. ~~Not later than 15 days before the mediation required pursuant to~~
35 ~~NRS 40.680 and upon providing 15 days’ notice, each party shall provide~~
36 ~~the other party, or shall make a reasonable effort to assist the other party to~~
37 ~~obtain, all relevant reports, photos, correspondence, plans, specifications,~~
38 ~~warranties, contracts, subcontracts, work orders for repair, videotapes,~~
39 ~~technical reports, soil and other engineering reports and other documents or~~
40 ~~materials relating to the claim that are not privileged.~~

41 ~~5.~~ If the claimant is a representative of a homeowner’s association,
42 the association shall submit any response made by the contractor to each
43 member of the association.

44 ~~6.~~ 5. As used in this section, “subcontractor” means a contractor
45 who performs work on behalf of another contractor in the construction of a
46 residence or appurtenance.

47 **Sec. 17.** NRS 40.650 is hereby amended to read as follows:

48 40.650 1. If a claimant unreasonably rejects a reasonable written
49 offer of settlement made as part of a response made pursuant to NRS



1 40.645 or 40.682 or does not permit the contractor or independent
2 contractor a reasonable opportunity to repair the defect pursuant to an
3 accepted offer of settlement and thereafter commences an action governed
4 by NRS 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this*
5 *act*, the court in which the action is commenced may:

- 6 (a) Deny the claimant’s attorney’s fees and costs; and
 - 7 (b) Award attorney’s fees and costs to the contractor.
- 8 Any sums paid under a homeowner’s warranty, other than sums paid in
9 satisfaction of claims that are collateral to any coverage issued to or by the
10 contractor, must be deducted from any recovery.

11 2. If a contractor fails to:

- 12 (a) Make an offer of settlement;
- 13 (b) Make a good faith response to the claim asserting no liability; *or*
- 14 (c) Complete, in a good and workmanlike manner, the repairs specified
15 in an accepted offer, ~~;~~
- 16 ~~(d) Agree to a mediator or accept the appointment of a mediator~~
17 ~~pursuant to NRS 40.680 or subsection 4 of NRS 40.682; or~~
- 18 ~~(e) Participate in mediation.~~

19 the limitations on damages and defenses to liability provided in NRS
20 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this act* do
21 not apply. ~~{and the claimant may commence an action without satisfying~~
22 ~~any other requirement of NRS 40.600 to 40.695, inclusive.}~~

23 3. If coverage under a homeowner’s warranty is denied by an insurer
24 in bad faith, the homeowner and the contractor have a right of action for
25 the sums that would have been paid if coverage had been provided, plus
26 reasonable attorney’s fees and costs.

27 **Sec. 18.** NRS 40.655 is hereby amended to read as follows:

28 40.655 1. Except as otherwise provided in NRS 40.650 ~~{}~~ *and*
29 *section 8 of this act*, in a claim governed by NRS 40.600 to 40.695,
30 inclusive, *and sections 2 to 11, inclusive, of this act*, the claimant may
31 recover only the following damages to the extent proximately caused by a
32 constructional defect:

- 33 (a) Any reasonable attorney’s fees;
- 34 (b) The reasonable cost of any repairs already made that were necessary
35 and of any repairs yet to be made that are necessary to cure any
36 constructional defect that the contractor failed to cure and the reasonable
37 expenses of temporary housing reasonably necessary during the repair;
- 38 (c) The reduction in market value of the residence or accessory
39 structure, if any, to the extent the reduction is because of structural failure;
- 40 (d) The loss of the use of all or any part of the residence;
- 41 (e) The reasonable value of any other property damaged by the
42 constructional defect;
- 43 (f) Any additional costs reasonably incurred by the claimant, including,
44 but not limited to, any costs and fees incurred for the retention of experts
45 to:
 - 46 (1) Ascertain the nature and extent of the constructional defects;
 - 47 (2) Evaluate appropriate corrective measures to estimate the value of
48 loss of use; and



1 (3) Estimate the value of loss of use, the cost of temporary housing
2 and the reduction of market value of the residence; and
3 (g) Any interest provided by statute.
4 2. The amount of any attorney's fees awarded pursuant to this section
5 must be approved by the court.
6 3. If a contractor complies with the provisions of NRS 40.600 to
7 40.695, inclusive, the claimant may not recover from the contractor, as a
8 result of the constructional defect, anything other than that which is
9 provided pursuant to NRS 40.600 to 40.695, inclusive.
10 4. As used in this section, "structural failure" means physical damage
11 to the load-bearing portion of a residence or appurtenance caused by a
12 failure of the load-bearing portion of the residence or appurtenance.
13 **Sec. 19.** NRS 40.668 is hereby amended to read as follows:
14 40.668 1. Notwithstanding the provisions of NRS 40.600 to 40.695,
15 inclusive, *and sections 2 to 11, inclusive, of this act*, a claimant may not
16 commence an action against a subdivider or master developer for a
17 constructional defect in an appurtenance constructed on behalf of the
18 subdivider or master developer in a planned unit development, to the extent
19 that the appurtenance was constructed by or through a licensed general
20 contractor, unless:
21 (a) The subdivider or master developer fails to provide to the claimant
22 the name, address and telephone number of each contractor hired by the
23 subdivider or master developer to construct the appurtenance within 30
24 days of the receipt by the subdivider or master developer of a request from
25 the claimant for such information; or
26 (b) After the claimant has made a good faith effort to obtain full
27 recovery from the contractors hired by the subdivider or master developer
28 to construct the appurtenance, the claimant has not obtained a full
29 recovery.
30 2. All statutes of limitation or repose applicable to a claim governed by
31 this section are tolled from the time the claimant notifies a contractor hired
32 by the subdivider or master developer of the claim until the earlier of the
33 date:
34 (a) A court determines that the claimant cannot obtain a full recovery
35 against those contractors; or
36 (b) The claimant receives notice that those contractors are bankrupt,
37 insolvent or dissolved.
38 Tolling pursuant to this subsection applies only to the subdivider or master
39 developer. Notwithstanding any applicable statute of limitation or repose,
40 the claimant may commence an action against the subdivider or master
41 developer for the claim within 1 year after the end of the tolling described
42 in this subsection.
43 3. Nothing in this section prohibits the commencement of an action
44 against a subdivider or master developer for a constructional defect in a
45 residence sold, designed or constructed by or on behalf of the subdivider or
46 master developer.
47 4. Nothing in this section prohibits a person other than the claimant
48 from commencing an action against a subdivider or master developer to
49 enforce his own rights.



1 5. The provisions of this section do not apply to a subdivider or master
2 developer who acts as a general contractor or uses his license as a general
3 contractor in the course of constructing the appurtenance that is the subject
4 of the action.

5 6. As used in this section:

6 (a) "Master developer" means a person who buys, sells or develops a
7 planned unit development, including, without limitation, a person who
8 enters into a development agreement pursuant to NRS 278.0201.

9 (b) "Planned unit development" has the meaning ascribed to it in NRS
10 278A.065.

11 (c) "Subdivider" has the meaning ascribed to it in NRS 278.0185.

12 **Sec. 20.** NRS 40.675 is hereby amended to read as follows:

13 40.675 1. A contractor who makes or provides for repairs under NRS
14 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this act* may
15 take reasonable steps to prove that the repairs were made and to have them
16 inspected.

17 2. The provisions of NRS 40.600 to 40.695, inclusive, *and sections 2*
18 *to 11, inclusive, of this act* regarding inspection and repair are in addition
19 to any rights of inspection and settlement provided by common law or by
20 another statute.

21 **Sec. 21.** NRS 40.680 is hereby amended to read as follows:

22 40.680 1. Except as otherwise provided in this chapter, before an
23 action based on a claim governed by NRS 40.600 to 40.695, inclusive, *and*
24 *sections 2 to 11, inclusive, of this act* may be commenced in court, the
25 matter must be submitted to ~~mediation, unless mediation is waived in~~
26 ~~writing by the contractor and the claimant.~~

27 ~~2. The claimant and contractor must select a mediator by agreement. If~~
28 ~~the claimant and contractor fail to agree upon a mediator within 45 days~~
29 ~~after a mediator is first selected by the claimant, either party may petition~~
30 ~~the American Arbitration Association, the Nevada Arbitration Association,~~
31 ~~Nevada Dispute Resolution Services or any other mediation service~~
32 ~~acceptable to the parties for the appointment of a mediator. A mediator so~~
33 ~~appointed may discover only those documents or records which are~~
34 ~~necessary to conduct the mediation. The mediator shall convene the~~
35 ~~mediation within 60 days after the matter is submitted to him, unless the~~
36 ~~parties agree to extend the time. Except in a complex matter, the claimant~~
37 ~~shall, before the mediation begins, deposit \$50 with the mediation service~~
38 ~~and the contractor shall deposit with the mediation service the remaining~~
39 ~~amount estimated by the mediation service as necessary to pay the fees and~~
40 ~~expenses of the mediator for the first session of mediation, and the~~
41 ~~contractor shall deposit additional amounts demanded by the mediation~~
42 ~~service as incurred for that purpose. In a complex matter, each party shall~~
43 ~~share equally in the deposits estimated by the mediation service. Unless~~
44 ~~otherwise agreed, the total fees for each day of mediation and the mediator~~
45 ~~must not exceed \$750 per day.~~

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



1 ~~—(a) The reasonable costs and fees of the mediation are recoverable by~~
2 ~~the prevailing party as costs of the action.~~
3 ~~—(b) Either party may petition the court in which the action is~~
4 ~~commenced for the appointment of a special master.~~
5 ~~—4. A special master appointed pursuant to subsection 3 may:~~
6 ~~—(a) Review all pleadings, papers or documents filed with the court~~
7 ~~concerning the action.~~
8 ~~—(b) Coordinate the discovery of any books, records, papers or other~~
9 ~~documents by the parties, including the disclosure of witnesses and the~~
10 ~~taking of the deposition of any party.~~
11 ~~—(c) Order any inspections on the site of the property by a party and any~~
12 ~~consultants or experts of a party.~~
13 ~~—(d) Order settlement conferences and attendance at those conferences by~~
14 ~~any representative of the insurer of a party.~~
15 ~~—(e) Require any attorney representing a party to provide statements of~~
16 ~~legal and factual issues concerning the action.~~
17 ~~—(f) Refer to the judge who appointed him or to the presiding judge of the~~
18 ~~court in which the action is commenced any matter requiring assistance~~
19 ~~from the court.~~
20 ~~The special master shall not, unless otherwise agreed by the parties,~~
21 ~~personally conduct any settlement conferences or engage in any ex parte~~
22 ~~meetings regarding the action.~~
23 ~~—5. Upon application by a party to the court in which the action is~~
24 ~~commenced, any decision or other action taken by a special master~~
25 ~~appointed pursuant to this section may be appealed to the court for a~~
26 ~~decision.~~
27 ~~—6. A report issued by a mediator or special master that indicates that~~
28 ~~either party has failed to appear before him or to mediate in good faith is~~
29 ~~admissible in the action, but a statement or admission made by either party~~
30 ~~in the course of mediation is not admissible.† *the state contractors' board*~~
31 ~~*for review pursuant to sections 2 to 11, inclusive, of this act within 30*~~
32 ~~*days after the expiration of the time for the:*~~
33 ~~*(a) Contractor to provide a written response to the claimant's written*~~
34 ~~*notice of defects pursuant to NRS 40.645 or 40.682;*~~
35 ~~*(b) Claimant to accept an offer made as part of a written response by*~~
36 ~~*the contractor to the claimant's written notice of defects pursuant to NRS*~~
37 ~~*40.645 or 40.682, if such an offer is made; or*~~
38 ~~*(c) Contractor to complete repairs made as part of a written response*~~
39 ~~*by the contractor to the claimant's written notice of defects pursuant to*~~
40 ~~*NRS 40.645 or 40.682 that is accepted by the claimant, including,*~~
41 ~~*without limitation, any extension of the period for completing repairs*~~
42 ~~*which has been agreed to in writing by the claimant and*~~
43 ~~*contractor,*~~
44 ~~*whichever is later.*~~
45 ~~*2. Any action involving a constructional defect that is filed without*~~
46 ~~*satisfying the requirements of NRS 40.600 to 40.695, inclusive, and*~~
47 ~~*sections 2 to 11, inclusive, of this act must be dismissed without prejudice*~~
48 ~~*for failure to comply with this section.*~~



1 *3. After the state contractors' board has issued an advisory opinion*
2 *concerning a claim of a constructional defect pursuant to the provisions*
3 *of section 6 of this act, a claimant may proceed to file an action based on*
4 *a claim governed by NRS 40.600 to 40.695, inclusive, and sections 2 to*
5 *11, inclusive, of this act.*

6 **Sec. 22.** NRS 40.682 is hereby amended to read as follows:

7 40.682 Except as otherwise provided in this section and NRS 40.670:

8 1. ~~Notwithstanding the provisions of subsection 1 of NRS 40.680, a~~
9 ~~claimant may commence an action in district court in a complex matter. If~~
10 ~~the claimant commences an action in district court he shall:~~

11 ~~— (a) File and serve the summons and complaint as required by law; and~~

12 ~~— (b) At the same time and in the same manner as the claimant serves the~~
13 ~~summons and complaint upon the contractor, serve upon the contractor]~~

14 *For a claim that is a complex matter, before a claimant submits a claim*
15 *of a constructional defect to the state contractors' board for review*
16 *pursuant to sections 2 to 11, inclusive, of this act and before a claimant*
17 *commences an action against a contractor for damages arising from a*
18 *constructional defect, the claimant must give a written notice by certified*
19 *mail, return receipt requested, to the contractor, at the contractor's last*
20 *known address, specifying in reasonable detail, to the extent known, the*

21 *defects and any damages or injuries to each residence or appurtenance that*
22 *is the subject of the claim. The notice must describe in reasonable detail*
23 *each defect, the specific location of each defect, and the nature and extent*
24 *that is known of the damage or injury resulting from each defect. If an*
25 *expert opinion has been rendered concerning the existence or extent of the*
26 *defects, a written copy of the opinion must accompany the notice. An*
27 *expert opinion that specifies each defect to the extent known, the specific*
28 *location of each defect to the extent known, and the nature and extent that*
29 *is known of the damage or injury resulting from each defect, based on a*
30 *valid and reliable representative sample of the residences and*
31 *appurtenances involved in the action, satisfies the requirements of this*
32 *section.*

33 2. ~~The contractor shall file and serve an answer to the complaint as~~
34 ~~required by law.~~

35 ~~3. Not later than 30 days after the date of service of the answer to the~~
36 ~~complaint, the contractor and claimant shall meet to establish a schedule~~
37 ~~for:~~

38 ~~— (a) The exchange of or reasonable access for the other party to all~~
39 ~~relevant reports, photos, correspondence, plans, specifications, warranties,~~
40 ~~contracts, subcontracts, work orders for repair, videotapes, technical~~
41 ~~reports, soil and other engineering reports and other documents or~~
42 ~~materials relating to the claim that are not privileged;~~

43 ~~— (b) The inspection of] *During the 60 days after the contractor receives*~~
44 ~~*the notice, on his written request, the contractor may:*~~

45 *(a) Inspect the residence or appurtenance that is the subject of the claim*
46 *to evaluate the defects set forth in the notice served pursuant to subsection*
47 *1; and*

48 ~~[(c) The conduct of]~~



1 **(b) Conduct** any tests that are reasonably necessary to determine the
2 nature and cause of a defect or any damage or injury, and the nature and
3 extent of repairs necessary to remedy a defect or any damage or injury. The
4 party conducting the test shall provide reasonable notice of the test to all
5 other parties and conduct the test at a reasonable time.
6 ~~14.—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.†~~ **3.** 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.



1 ~~10. Unless the parties agree otherwise, not less than 60 days before~~
2 ~~the date of the mediation pursuant to paragraph (b) of subsection 4 is~~
3 ~~convened.~~

4 *4. Within 90 days after the contractor receives the notice,* the
5 contractor shall make a written response to the claimant that meets the
6 requirements set forth in subsection 3 of NRS 40.645.

7 ~~11.~~ *5.* If the claimant is a representative of a homeowner's
8 association, the association shall submit any response made by the
9 contractor to each member of the association in writing not more than 30
10 days after the date the claimant receives the response.

11 ~~12.~~ *6.* The claimant shall respond to the written response of the
12 contractor within 45 days after the response of the contractor is mailed to
13 the claimant.

14 *7. If a claimant accepts an offer to repair made as a part of a written*
15 *response of a contractor pursuant to this section, the contractor shall*
16 *complete the repairs or cause the repairs to be completed within 90 days*
17 *after the contractor receives written notice of acceptance of the response,*
18 *unless completion is delayed by the claimant or by other events beyond*
19 *the control of the contractor, or timely completion of the repairs is not*
20 *reasonably possible. The claimant and the contractor may agree in*
21 *writing to extend the periods prescribed by this section.*

22 **Sec. 23.** NRS 40.688 is hereby amended to read as follows:

23 40.688 1. If a claimant attempts to sell a residence that is or has been
24 the subject of a claim governed by NRS 40.600 to 40.695, inclusive, *and*
25 *sections 2 to 11, inclusive, of this act,* he shall disclose, in writing, to any
26 prospective purchaser of the residence, not less than 30 days before the
27 close of escrow for the sale of the residence or, if escrow is to close less
28 than 30 days after the execution of the sales agreement, then immediately
29 upon the execution of the sales agreement or, if a claim is initiated less
30 than 30 days before the close of escrow, within 24 hours after giving
31 written notice to the contractor pursuant to subsection 1 of NRS 40.645 or
32 subsection 1 of NRS 40.682:

33 (a) All notices given by the claimant to the contractor pursuant to NRS
34 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this act* that
35 are related to the residence;

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

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

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

43 2. Before taking any action on a claim pursuant to NRS 40.600 to
44 40.695, inclusive, *and sections 2 to 11, inclusive, of this act,* the attorney
45 for a claimant shall notify the claimant in writing of the provisions of this
46 section.



1 **Sec. 24.** NRS 40.689 is hereby amended to read as follows:
2 40.689 1. Upon petition by a party:
3 (a) The court shall give preference in setting a date for the trial of an
4 action commenced pursuant to NRS 40.600 to 40.695, inclusive ~~†~~, *and*
5 *sections 2 to 11, inclusive, of this act*; and
6 (b) The court may assign an action commenced pursuant to NRS 40.600
7 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this act* to a senior
8 judge.
9 2. If the action is assigned to a senior judge upon petition by a party:
10 (a) Any additional expenses caused by the assignment must be borne
11 equally by each party involved; or
12 (b) The judge may distribute any additional expenses among the parties
13 as he deems appropriate.
14 **Sec. 25.** NRS 40.690 is hereby amended to read as follows:
15 40.690 1. A claim governed by NRS 40.600 to 40.695, inclusive,
16 *and sections 2 to 11, inclusive, of this act* may not be brought by a
17 claimant or contractor against a government, governmental agency or
18 political subdivision of a government ~~†~~ during the period in which a claim
19 for a constructional defect is being settled ~~†, mediated†~~ or otherwise
20 resolved pursuant to NRS 40.600 to 40.695, inclusive ~~†~~, *and sections 2 to*
21 *11, inclusive, of this act*. The settlement of such a claim does not affect the
22 rights or obligations of the claimant or contractor in any action brought by
23 the claimant or contractor against a third party.
24 2. A contractor or claimant may require a party against whom the
25 contractor or claimant asserts a claim governed by NRS 40.600 to 40.695,
26 inclusive, *and sections 2 to 11, inclusive, of this act* to appear and
27 participate in proceedings held pursuant to those sections as if the party
28 were a contractor and the party requiring him to appear were a claimant.
29 The party must receive notice of the proceedings from the contractor or
30 claimant.
31 **Sec. 26.** NRS 40.692 is hereby amended to read as follows:
32 40.692 If, after complying with the procedural requirements of NRS
33 ~~†40.645 and 40.680, or NRS 40.682,†~~ *40.600 to 40.695, inclusive, and*
34 *sections 2 to 11, inclusive, of this act*, a claimant proceeds with an action
35 for damages arising from a constructional defect:
36 1. The claimant and each contractor who is named in the original
37 complaint when the action is commenced are not required, while the action
38 is pending, to comply with the requirements of NRS ~~†40.645 or 40.680, or~~
39 ~~NRS 40.682,†~~ *40.600 to 40.695, inclusive, and sections 2 to 11, inclusive,*
40 *of this act* for any constructional defect that the claimant includes in an
41 amended complaint, if the constructional defect:
42 (a) Is attributable, in whole or in part, to such a contractor;
43 (b) Is located on the same property described in the original complaint;
44 and
45 (c) Was not discovered before the action was commenced provided that
46 a good faith effort had been undertaken by the claimant.
47 2. The claimant is not required to give written notice of a defect
48 pursuant to subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682 to



1 any person who is joined to or intervenes in the action as a party after it is
2 commenced. If such a person becomes a party to the action:

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

7 (b) The provisions of NRS 40.600 to 40.695, inclusive, *and sections 2*
8 *to 11, inclusive, of this act* apply to the person after that date.

9 **Sec. 27.** NRS 40.695 is hereby amended to read as follows:

10 40.695 1. Except as otherwise provided in subsection 2, statutes of
11 limitation or repose applicable to a claim based on a constructional defect
12 governed by NRS 40.600 to 40.695, inclusive, *and sections 2 to 11,*
13 *inclusive, of this act* are tolled from the time notice of the claim is given,
14 until ~~{30}~~ :

15 (a) *Thirty* days after ~~{mediation is concluded or waived in writing~~
16 ~~pursuant to NRS 40.680 or subsection 4 of NRS 40.682.}~~ *an advisory*
17 *opinion is rendered by the state contractors' board pursuant to sections 2*
18 *to 11, inclusive, of this act; or*

19 (b) *If the state contractors' board issues an order requiring a*
20 *contractor to repair a constructional defect pursuant to section 8 of this*
21 *act, 45 days after the expiration of the time provided by the board for the*
22 *completion of repairs,*
23 *whichever is later.*

24 2. Tolling under this section applies ~~{~~

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

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

28 **Sec. 28.** NRS 113.135 is hereby amended to read as follows:

29 113.135 1. Upon signing a sales agreement with the initial purchaser
30 of residential property that was not occupied by the purchaser for more
31 than 120 days after substantial completion of the construction of the
32 residential property, the seller shall:

33 (a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206,
34 inclusive, and 40.600 to 40.695, inclusive, ~~{~~ , *and sections 2 to 11,*
35 *inclusive, of this act;*

36 (b) Notify the initial purchaser of any soil report prepared for the
37 residential property or for the subdivision in which the residential property
38 is located; and

39 (c) If requested in writing by the initial purchaser not later than 5 days
40 after signing the sales agreement, provide to the purchaser , without cost ,
41 each report described in paragraph (b) not later than 5 days after the seller
42 receives the written request.

43 2. Not later than 20 days after receipt of all reports pursuant to
44 paragraph (c) of subsection 1, the initial purchaser may rescind the sales
45 agreement.

46 3. The initial purchaser may waive his right to rescind the sales
47 agreement pursuant to subsection 2. Such a waiver is effective only if it is
48 made in a written document that is signed by the purchaser.



1 **Sec. 29.** The amendatory provisions of this act do not apply to a claim
2 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
3 inclusive, before October 1, 2001.

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