

ASSEMBLY BILL NO. 81—COMMITTEE ON JUDICIARY

FEBRUARY 9, 2001

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing claims for constructional defects, dissolution of corporations and limited-liability companies and common-interest community associations. (BDR 3-989)

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; revising provisions governing the enforceability of arbitration agreements relating to constructional defect matters; revising provisions governing offers to repair and repair of constructional defects; revising provisions governing the recovery of damages for constructional defects; revising provisions governing the dissolution of corporations and limited-liability companies; prohibiting contractual clauses which require arbitration in certain circumstances; revising provisions governing the commencement of a civil action by a common-interest community association; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 38.035 is hereby amended to read as follows:
2 38.035 ~~1A~~ ***Except as otherwise provided in sections 11 and 13 of this***
3 ***act, a*** written agreement to submit any existing controversy to arbitration
4 or a provision in a written contract to submit to arbitration any controversy
5 thereafter arising between the parties is valid, enforceable and irrevocable,
6 save upon such grounds as exist at law or in equity for the revocation of
7 any contract. NRS 38.015 to 38.205, inclusive, also apply to arbitration
8 agreements between employers and employees or between their respective
9 representatives unless otherwise provided in the agreement.
10 **Sec. 2.** NRS 38.045 is hereby amended to read as follows:
11 38.045 1. On application of a party showing an agreement described
12 in NRS 38.035, and the opposing party's refusal to arbitrate, the court shall
13 order the parties to proceed with arbitration, but if the opposing party
14 denies the existence of the agreement to arbitrate, the court shall proceed
15 summarily to the determination of the issue so raised and shall order



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1 arbitration if found for the moving party; otherwise, the application shall be
2 denied.

3 2. On application, the court may stay an arbitration proceeding
4 commenced or threatened on a showing that there is no agreement to
5 arbitrate ~~+~~ *or that an agreement to arbitrate is void pursuant to section*
6 *11 or 13 of this act.* Such an issue, when in substantial and bona fide
7 dispute, shall be forthwith and summarily tried and the stay ordered if
8 found for the moving party. If found for the opposing party, the court shall
9 order the parties to proceed to arbitration.

10 3. If an issue referable to arbitration under the alleged agreement is
11 involved in an action or proceeding pending in a court having jurisdiction
12 to hear applications under subsection 1, the application shall be made
13 therein. Otherwise and subject to NRS 38.195, the application may be
14 made in any court of competent jurisdiction.

15 4. Any action or proceeding involving an issue subject to arbitration
16 shall be stayed if an order for arbitration or an application therefor has been
17 made under this section or, if the issue is severable, the stay may be with
18 respect thereto only. When the application is made in such action or
19 proceeding, the order for arbitration shall include such stay.

20 5. An order for arbitration shall not be refused on the ground that the
21 claim in issue lacks merit or bona fides or because any fault or grounds for
22 the claim sought to be arbitrated have not been shown.

23 **Sec. 3.** NRS 38.145 is hereby amended to read as follows:

24 38.145 1. Upon application of a party, the court shall vacate an
25 award where:

26 (a) The award was procured by corruption, fraud or other undue means;

27 (b) There was evident partiality by an arbitrator appointed as a neutral
28 or corruption in any of the arbitrators or misconduct substantially
29 prejudicing the rights of any party;

30 (c) The arbitrators exceeded their powers;

31 (d) The arbitrators refused to postpone the hearing upon sufficient cause
32 being shown therefor or refused to hear evidence material to the
33 controversy or otherwise so conducted the hearing, contrary to the
34 provisions of NRS 38.075, as to prejudice substantially the rights of a
35 party; or

36 (e) There was no arbitration agreement *or the arbitration agreement*
37 *was void pursuant to section 11 or 13 of this act*, and the issue was not
38 adversely determined in proceedings under NRS 38.045 and the party did
39 not participate in the arbitration hearing without raising the objection.

40 But the fact that the relief was such that it could not or would not be
41 granted by a court of law or equity is not ground for vacating or refusing to
42 confirm the award.

43 2. An application under this section shall be made within 90 days after
44 delivery of a copy of the award to the applicant, except that, if predicated
45 upon corruption, fraud or other undue means, it shall be made within 90
46 days after such grounds are known or should have been known.

47 3. In vacating the award on grounds other than stated in paragraph (e)
48 of subsection 1 the court may order a rehearing before new arbitrators
49 chosen as provided in the agreement, or in the absence thereof, by the court



1 in accordance with NRS 38.055, or, if the award is vacated on grounds set
2 forth in paragraphs (c) and (d) of subsection 1, the court may order a
3 rehearing before the arbitrators who made the award or their successors
4 appointed in accordance with NRS 38.055. The time within which the
5 agreement requires the award to be made is applicable to the rehearing and
6 commences from the date of the order.

7 4. If the application to vacate is denied and no motion to modify or
8 correct the award is pending, the court shall confirm the award.

9 **Sec. 4.** NRS 40.645 is hereby amended to read as follows:

10 40.645 Except as otherwise provided in this section and NRS 40.670:

11 1. For a claim that is not a complex matter, at least 60 days before a
12 claimant commences an action against a contractor for damages arising
13 from a constructional defect, the claimant must give written notice by
14 certified mail, return receipt requested, to the contractor, at the contractor's
15 last known address, specifying in reasonable detail the defects or any
16 damages or injuries to each residence or appurtenance that is the subject of
17 the claim. The notice must describe in reasonable detail the cause of the
18 defects if the cause is known, the nature and extent that is known of the
19 damage or injury resulting from the defects and the location of each defect
20 within each residence or appurtenance to the extent known. An expert
21 opinion concerning the cause of the defects and the nature and extent of the
22 damage or injury resulting from the defects based on a representative
23 sample of the components of the residences and appurtenances involved in
24 the action satisfies the requirements of this section. During the 45-day
25 period after the contractor receives the notice, on his written request, the
26 contractor is entitled to inspect the property that is the subject of the claim
27 to determine the nature and cause of the defect, damage or injury and the
28 nature and extent of repairs necessary to remedy the defect. The contractor
29 shall, before making the inspection, provide reasonable notice of the
30 inspection and shall make the inspection at a reasonable time. The
31 contractor may take reasonable steps to establish the existence of the
32 defect.

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

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

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

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

47 (c) May include:

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



1 (2) If the contractor or his subcontractor is licensed to make the
2 repairs, an agreement by the contractor or subcontractor to make the
3 repairs.

4 (3) An agreement by the contractor to cause the repairs to be made, at
5 the ~~contractor's expense,~~ *expense of the contractor*, by another
6 contractor who is licensed to make the repairs, bonded and insured.
7 The repairs must be made within 45 days after the contractor receives
8 written notice of acceptance of the response, unless completion is delayed
9 by the claimant or by other events beyond the control of the contractor, or
10 timely completion of the repairs is not reasonably possible. The claimant
11 and the contractor may agree in writing to extend the periods prescribed by
12 this section.

13 4. *A contractor who repairs or causes repairs to be made of a*
14 *constructional defect pursuant to this section shall:*

15 (a) *Pay for an independent person to supervise and inspect any such*
16 *repair. The independent person must be selected by the claimant and*
17 *must have the appropriate license and qualifications.*

18 (b) *Provide a payment bond and a performance bond to the claimant*
19 *in an amount not less than 1 1/2 times the market value of the proposed*
20 *repair. The market value of any proposed repair must be determined by*
21 *averaging three bids for the proposed repair which are obtained by the*
22 *contractor from independent contractors who are appropriately licensed,*
23 *bonded and insured to perform the proposed repair.*

24 5. Not later than 15 days before the mediation required pursuant to
25 NRS 40.680 and upon providing 15 days' notice, each party shall provide
26 the other party, or shall make a reasonable effort to assist the other party to
27 obtain, all relevant reports, photos, correspondence, plans, specifications,
28 warranties, contracts, subcontracts, work orders for repair, videotapes,
29 technical reports, soil and other engineering reports and other documents or
30 materials relating to the claim that are not privileged.

31 ~~5-1~~ 6. If the claimant is a representative of a homeowner's association,
32 the association shall submit any response made by the contractor to each
33 member of the association.

34 ~~16-1~~ 7. As used in this section, "subcontractor" means a contractor who
35 performs work on behalf of another contractor in the construction of a
36 residence or appurtenance.

37 **Sec. 5.** NRS 40.655 is hereby amended to read as follows:

38 40.655 1. Except as otherwise provided in NRS 40.650 ~~H~~ *and*
39 *40.667*, in a claim governed by NRS 40.600 to 40.695, inclusive, the
40 claimant may recover only the following damages to the extent
41 proximately caused by a constructional defect:

42 (a) Any reasonable attorney's fees;

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

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

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



- 1 (e) The reasonable value of any other property damaged by the
2 constructional defect;
- 3 (f) Any additional costs reasonably incurred by the claimant, including,
4 but not limited to, any costs and fees incurred for the retention of experts
5 to:
- 6 (1) Ascertain the nature and extent of the constructional defects;
7 (2) Evaluate appropriate corrective measures to estimate the value of
8 loss of use; and
9 (3) Estimate the value of loss of use, the cost of temporary housing
10 and the reduction of market value of the residence; and
11 (g) Any interest provided by statute.
- 12 2. The amount of any attorney's fees awarded pursuant to this section
13 must be approved by the court.
- 14 3. ~~HH~~ *Except as otherwise provided in NRS 11.202 and chapter 116*
15 *of NRS, if* a contractor complies with the provisions of NRS 40.600 to
16 40.695, inclusive, the claimant may not recover from the contractor, as a
17 result of the constructional defect, anything other than that which is
18 provided pursuant to NRS 40.600 to 40.695, inclusive.
- 19 4. *No contract or agreement may limit or alter the damages that may*
20 *be recovered pursuant to this section. Any provision of a contract or*
21 *agreement that conflicts with the provisions of this subsection is void.*
- 22 5. As used in this section, "structural failure" means physical damage
23 to the load-bearing portion of a residence or appurtenance caused by a
24 failure of the load-bearing portion of the residence or appurtenance.
- 25 **Sec. 6.** NRS 40.667 is hereby amended to read as follows:
- 26 40.667 1. Except as otherwise provided in subsection 2, a written
27 waiver or settlement agreement executed by a claimant after a contractor
28 has corrected or otherwise repaired a constructional defect does not bar a
29 claim for the constructional defect if it is determined that the contractor
30 failed to correct or repair the defect properly.
- 31 2. The provisions of subsection 1 do not apply to any written waiver or
32 settlement agreement described in subsection 1, unless:
- 33 (a) The claimant has obtained the opinion of an expert concerning the
34 constructional defect;
- 35 (b) The claimant has provided the contractor with a written notice of the
36 defect pursuant to NRS 40.645 or 40.682 and a copy of the expert's
37 opinion; and
- 38 (c) The claimant and the contractor have complied with the
39 requirements for inspection and repair as provided in NRS 40.600 to
40 40.695, inclusive.
- 41 3. If a claimant does not prevail in any action which is not barred
42 pursuant to this section, the court may:
- 43 (a) Deny the claimant's attorney's fees, fees for an expert witness or
44 costs; and
- 45 (b) Award attorney's fees and costs to the contractor.
- 46 4. *If the court determines in an action which is not barred pursuant*
47 *to this section that a contractor failed to correct or repair a*
48 *constructional defect properly:*



1 (a) *The limitation on damages provided in NRS 40.655 does not apply*
2 *and the claimant may recover the damages described in NRS 40.655 in*
3 *addition to any other damages to which he may be entitled;*

4 (b) *The court shall revoke the license of the contractor and notify the*
5 *state contractors' board of the revocation; and*

6 (c) *The contractor is liable to the claimant for damages in an amount*
7 *equal to three times the reasonable cost of repairs necessary to cure the*
8 *constructional defect that the contractor failed to correct or repair*
9 *properly.*

10 **Sec. 7.** NRS 40.670 is hereby amended to read as follows:

11 40.670 1. A contractor who receives written notice of a
12 constructional defect resulting from work performed by the contractor or
13 his agent, employee or subcontractor which creates an imminent threat to
14 the health or safety of the inhabitants of the residence shall take reasonable
15 steps to cure the defect as soon as practicable. The contractor shall not cure
16 the defect by making any repairs for which he is not licensed or by causing
17 any repairs to be made by a person who is not licensed to make those
18 repairs. ~~HH~~

19 2. *Except as otherwise provided in subsection 3 or 4, if* the contractor
20 fails to cure the defect in a reasonable time, the owner of the residence may
21 have the defect cured and may recover from the contractor the reasonable
22 cost of the repairs plus reasonable attorney's fees and costs in addition to
23 any other damages recoverable under any other law.

24 ~~{2. A}~~

25 3. *Except as otherwise provided in subsection 4, a* contractor who
26 does not cure a defect pursuant to this section because he has determined,
27 in good faith and after a reasonable inspection, that there is not an
28 imminent threat to the health or safety of the inhabitants is not liable for
29 *the cost of repairs, attorney's fees and costs, or other damages relating to*
30 *the defect* pursuant to ~~this section, except that if a building inspector~~
31 ~~employed by a governmental body with jurisdiction certifies that there is~~
32 ~~an imminent threat to the health and safety of the inhabitants of the~~
33 ~~residence, the contractor is subject to the provisions of subsection 1.~~
34 *subsection 2.*

35 4. *If an architect or residential designer registered pursuant to*
36 *chapter 623 of NRS, or a professional engineer licensed pursuant to*
37 *chapter 625 of NRS, certifies that the defect creates an imminent threat*
38 *to the health or safety of the inhabitants of the residence, and if the trier*
39 *of fact determines that the contractor refused to correct the defect in a*
40 *timely manner and was not acting in good faith, the owner of the*
41 *residence is entitled to recover from the contractor, in addition to*
42 *reasonable attorney's fees and costs, treble the reasonable cost of the*
43 *repairs and other damages.*

44 **Sec. 8.** NRS 78.585 is hereby amended to read as follows:

45 78.585 ~~{The}~~

46 1. *Except as otherwise provided in subsection 2, the* dissolution of a
47 corporation does not impair any *claim*, remedy or cause of action available
48 to or against it or its directors, officers or shareholders arising before its
49 dissolution and commenced within 2 years after the date of the dissolution.



1 It continues as a body corporate for the purpose of prosecuting and
2 defending suits, actions, proceedings and claims of any kind or character
3 by or against it and of enabling it gradually to settle and close its business,
4 to collect and discharge its obligations, to dispose of and convey its
5 property, and to distribute its assets, but not for the purpose of continuing
6 the business for which it was established.

7 *2. The dissolution of a corporation does not impair any claim,*
8 *remedy or cause of action available to or against it or its directors,*
9 *officers or shareholders arising pursuant to NRS 40.600 to 40.695,*
10 *inclusive, before or after its dissolution and commenced before the*
11 *expiration of a statute of limitation or repose applicable to the claim,*
12 *remedy or cause of action.*

13 **Sec. 9.** NRS 78.615 is hereby amended to read as follows:
14 78.615 ~~HH~~

15 *1. Except as otherwise provided in subsection 2, if* any corporation
16 organized ~~under~~ *pursuant to* this chapter becomes dissolved by the
17 expiration of its charter or otherwise, before final judgment obtained in any
18 action pending or commenced in any court of record of this state against
19 the corporation, the action ~~shall not abate by reason thereof,~~ *must not*
20 *abate because of the dissolution of the corporation,* but the dissolution of
21 the corporation being suggested upon the record, and the names of the
22 trustees or receivers of the corporation being entered upon the record, and
23 notice thereof served upon the trustees or receivers, or, if such service ~~be~~
24 *is* impracticable, upon the counsel of record in such case, the action ~~shall~~
25 *must* proceed to final judgment against the trustees or receivers ~~by~~ *in* the
26 name of the corporation.

27 *2. A pending action or proceeding for a claim, remedy or cause of*
28 *action arising pursuant to NRS 40.600 to 40.695, inclusive, against a*
29 *corporation organized pursuant to this chapter, whether commenced*
30 *before or after the corporation becomes dissolved, must not abate*
31 *because of the dissolution of the corporation, but must proceed against*
32 *the trustees or receivers in the name of the corporation.*

33 **Sec. 10.** NRS 86.505 is hereby amended to read as follows:
34 86.505 ~~The~~

35 *1. Except as otherwise provided in subsection 2, the* dissolution of a
36 limited-liability company does not impair any *claim,* remedy or cause of
37 action available to or against it or its managers or members arising before
38 its dissolution and commenced within 2 years after the date of the
39 dissolution. A dissolved company continues as a company for the purpose
40 of prosecuting and defending suits, actions, proceedings and claims of any
41 kind or nature by or against it and of enabling it gradually to settle and
42 close its business, to collect and discharge its obligations, to dispose of and
43 convey its property, and to distribute its assets, but not for the purpose of
44 continuing the business for which it was established.

45 *2. The dissolution of a limited-liability company does not impair any*
46 *claim, remedy or cause of action available to or against it or its managers*
47 *or members arising pursuant to NRS 40.600 to 40.695, inclusive, before*
48 *or after its dissolution and commenced before the expiration of a statute*
49 *of limitation or repose applicable to the claim, remedy or cause of action.*



1 **Sec. 11.** Chapter 113 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 1. *A seller shall not include in a contract for the purchase and sale*
4 *of real property in this state that is entered into on or after October 1,*
5 *2001, a provision requiring binding or nonbinding arbitration of a claim*
6 *involving a constructional defect which is governed by NRS 40.600 to*
7 *40.695, inclusive.*

8 2. *A provision of a contract that conflicts with the provisions of*
9 *subsection 1 is void.*

10 3. *The provisions of this section do not:*

11 (a) *Prohibit parties to a claim involving a constructional defect that is*
12 *governed by NRS 40.600 to 40.695, inclusive, from agreeing to*
13 *participate in binding or nonbinding arbitration, or any other alternative*
14 *method of resolving a dispute after a claim is commenced pursuant to*
15 *NRS 40.600 to 40.695, inclusive.*

16 (b) *Apply to the arbitration of a matter that is otherwise required by*
17 *law or rule of court.*

18 4. *As used in this section, "constructional defect" has the meaning*
19 *ascribed to it in NRS 40.615.*

20 **Sec. 12.** NRS 116.3115 is hereby amended to read as follows:

21 116.3115 1. Until the association makes an assessment for common
22 expenses, the declarant shall pay all common expenses. After an
23 assessment has been made by the association, assessments must be made at
24 least annually, based on a budget adopted at least annually by the
25 association in accordance with the requirements set forth in NRS
26 116.31151. Except for an association for a time-share project governed by
27 the provisions of chapter 119A of NRS, and unless the declaration imposes
28 more stringent standards, the budget must include a budget for the daily
29 operation of the association and the money for the reserve required by
30 paragraph (b) of subsection 2.

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

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

35 (b) The association shall establish an adequate reserve, funded on a
36 reasonable basis, for the repair, replacement and restoration of the major
37 components of the common elements. The reserve may be used only for
38 those purposes, including, without limitation, repairing, replacing and
39 restoring roofs, roads and sidewalks, and must not be used for daily
40 maintenance.

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

44 4. To the extent required by the declaration:

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



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

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

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

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

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

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

17 9. The association shall provide written notice to the owner of each
18 unit of a meeting at which an assessment for a capital improvement or the
19 commencement of a civil action is to be considered or action is to be taken
20 on such an assessment at least 21 calendar days before the meeting.

21 *10. Except as otherwise provided in this subsection ~~10~~ and subsection*
22 *11, the association may commence a civil action only upon a vote or*
23 *written agreement of the owners of units to which at least a majority of the*
24 *votes of the members of the association are allocated. If the association,*
25 *after making a good faith effort, cannot obtain a majority of votes or*
26 *agreements to commence a civil action, the association may commence*
27 *the civil action, unless a majority of votes at the time a vote was taken*
28 *were against commencement of the civil action. If an action is*
29 *commenced before the association obtains the required number of votes,*
30 *the association must obtain a ratification for the commencement of the*
31 *civil action within 90 days after the action is commenced by a vote or*
32 *written agreement of the owners of units to which at least a majority of*
33 *votes of the members of the association are allocated. If such ratification*
34 *is not obtained, the association shall seek dismissal of the action without*
35 *prejudice only if a majority of votes at the time a vote was taken were in*
36 *favor of the dismissal.*

37 *11. The provisions of ~~this~~ subsection 10 do not apply to a civil action*
38 *that is commenced:*

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

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

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

43 (d) To proceed with a counterclaim; or

44 (e) To protect the health, safety and welfare of the members of the
45 association. ~~If a civil action is commenced pursuant to this paragraph~~

46 ~~without the required vote or agreement, the action must be ratified within~~

47 ~~90 days after the commencement of the action by a vote or written~~

48 ~~agreement of the owners of the units to which at least a majority of votes of~~

49 ~~the members of the association are allocated. If the association, after~~



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~~making a good faith effort, cannot obtain the required vote or agreement to commence or ratify such a civil action, the association may thereafter seek to dismiss the action without prejudice for that reason only if a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the association are allocated was obtained at the time the approval to commence or ratify the action was sought.~~

~~10.]~~ **12.** At least 10 days before an association commences or seeks to ratify the commencement of a civil action, the association shall provide a written statement to all units' owners that includes:

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

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

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

~~111]~~ **13.** No person other than a unit's owner may request the dismissal of a civil action commenced by the association on the ground that the association failed to comply with any provision of this section.

Sec. 13. Chapter 624 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A contractor shall not include in any contract or agreement for the purchase and sale of real property, or for the repair, alteration of or addition to a new or existing residence, or of an appurtenance that is entered into on or after October 1, 2001, a provision requiring binding or nonbinding arbitration of a claim involving a constructional defect which is governed by NRS 40.600 to 40.695, inclusive.

2. A provision of a contract or agreement that conflicts with the provisions of subsection 1 is void.

3. The provisions of this section do not:

(a) Prohibit parties to a claim involving a constructional defect that is governed by NRS 40.600 to 40.695, inclusive, from agreeing to participate in binding or nonbinding arbitration, or any other alternative method of resolving a dispute after a claim has been commenced pursuant to NRS 40.600 to 40.695, inclusive.

(b) Apply to the arbitration of a matter that is otherwise required by law or rule of court.

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

Sec. 14. NRS 624.300 is hereby amended to read as follows:

624.300 1. Except as otherwise provided in ~~subsection 3,~~ *subsections 3 and 7,* the board may:

(a) Suspend or revoke licenses already issued;

(b) Refuse renewals of licenses;

(c) Impose limits on the field, scope and monetary limit of the license;

(d) Impose an administrative fine of not more than \$10,000;



- 1 (e) Order a licensee to repay to the account established pursuant to NRS
2 624.470, any amount paid out of the account pursuant to NRS 624.510 as a
3 result of an act or omission of that licensee;
- 4 (f) Order the licensee to take action to correct a condition resulting from
5 an act which constitutes a cause for disciplinary action, at the licensee's
6 cost, that may consist of requiring the licensee to:
- 7 (1) Perform the corrective work himself;
8 (2) Hire and pay another licensee to perform the corrective work; or
9 (3) Pay to the owner of the construction project a specified sum to
10 correct the condition; or
- 11 (g) Reprimand or take other less severe disciplinary action, including,
12 without limitation, increasing the amount of the surety bond or cash deposit
13 of the licensee,
14 if the licensee commits any act which constitutes a cause for disciplinary
15 action.
- 16 2. If the board suspends or revokes the license of a contractor for
17 failure to establish financial responsibility, the board may, in addition to
18 any other conditions for reinstating or renewing the license, require that
19 each contract undertaken by the licensee for a period to be designated by
20 the board, not to exceed 12 months, be separately covered by a bond or
21 bonds approved by the board and conditioned upon the performance of and
22 the payment of labor and materials required by the contract.
- 23 3. If a licensee violates the provisions of NRS 624.3014 or subsection
24 3 of NRS 624.3015, the board may impose an administrative fine of not
25 more than \$20,000.
- 26 4. If a licensee commits a fraudulent act which is a cause for
27 disciplinary action under NRS 624.3016, the correction of any condition
28 resulting from the act does not preclude the board from taking disciplinary
29 action.
- 30 5. If the board finds that a licensee has engaged in repeated acts that
31 would be cause for disciplinary action, the correction of any resulting
32 conditions does not preclude the board from taking disciplinary action
33 pursuant to this section.
- 34 6. The expiration of a license by operation of law or by order or
35 decision of the board or a court, or the voluntary surrender of a license by a
36 licensee, does not deprive the board of jurisdiction to proceed with any
37 investigation of, or action or disciplinary proceeding against, the licensee
38 or to render a decision suspending or revoking the license.
- 39 7. *A licensee whose license has been revoked by an order of the court
40 pursuant to NRS 40.667 may apply for reinstatement of his license if he
41 prevails on appeal and the order of the court revoking his license is
42 reversed.*
- 43 8. If discipline is imposed pursuant to this section, including any
44 discipline imposed pursuant to a stipulated settlement, the costs of the
45 proceeding, including investigative costs and attorney's fees, may be
46 recovered by the board.



* A B 8 1 *

- 1 **Sec. 15.** 1. The amendatory provisions of this act do not apply to an
2 action or suit filed before October 1, 2001.
3 2. The amendatory provisions of this act apply to a contract or
4 agreement entered into on or after October 1, 2001.

