

SENATE BILL NO. 185—COMMITTEE ON JUDICIARY

FEBRUARY 15, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning construction, constructional defects and common-interest communities. (BDR 3-94)

FISCAL NOTE: Effect on Local Government: Yes.
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; making various changes concerning construction, constructional defects and common-interest communities; providing a penalty; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 40 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 11, inclusive, of this act.
3 **Sec. 2.** *“Design professional” means a person who has a*
4 *professional license or certificate that was issued pursuant to chapter*
5 *623, 623A or 625 of NRS.*
6 **Sec. 3.** *“Subcontractor” means a contractor who performs work on*
7 *behalf of another contractor in the construction of a residence or*
8 *appurtenance.*
9 **Sec. 4.** *“Supplier” means a person who provides materials,*
10 *equipment or other supplies for the construction of a residence or*
11 *appurtenance.*
12 **Sec. 5.** *A contractor who performs any work to repair a*
13 *constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and*
14 *sections 2 to 11, inclusive, of this act other than pursuant to NRS 40.670*
15 *may charge a subcontractor who the contractor believes caused the*
16 *defect for such work only if before performing the work the contractor:*
17 1. *Gives written notice describing each defect in reasonable detail to*
18 *the subcontractor by certified mail, return receipt requested, at the*
19 *subcontractor’s last address listed in the records of the state contractors’*
20 *board, or at the subcontractor’s last known address if his address is not*
21 *listed in the records of the state contractors’ board; and*
22 2. *Provides the subcontractor with a reasonable amount of time after*
23 *mailing the written notice pursuant to subsection 1 to repair each defect*



1 or to make arrangements satisfactory to the claimant to have such
2 repairs made, or, if the constructional defect is not part of a complex
3 matter, waits for the time required pursuant to NRS 40.672, if applicable.

4 **Sec. 6.** 1. A contractor, subcontractor, supplier or design
5 professional who performs any work to repair a constructional defect
6 pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 to 11,
7 inclusive, of this act shall warrant such work to be free from defects in
8 materials and workmanship for at least 1 year from the date on which the
9 work was completed.

10 2. A written or verbal agreement to perform work to repair a
11 constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and
12 sections 2 to 11, inclusive, of this act that is entered into on or after
13 October 1, 2001, has the legal effect of including the warranty required
14 by subsection 1, and any provision of such an agreement or statement
15 made in relation to such an agreement that conflicts with the provisions
16 of this section is void.

17 **Sec. 7.** A claimant who enters into an agreement to settle a claim
18 governed by NRS 40.600 to 40.695, inclusive, and sections 2 to 11,
19 inclusive, of this act or who obtains a judgment in an action involving
20 such a claim shall file in the office of the county recorder of the county
21 where the real property which is the subject of the claim is located a
22 notice that provides a complete legal description of the real property
23 involved in the claim and describes the general nature of the settlement
24 or judgment.

25 **Sec. 8.** Within 60 days after a claimant commences an action
26 against a contractor for damages arising from a constructional defect
27 other than a defect set forth in NRS 40.670 or 40.672, the contractor who
28 was sent a written notice pursuant to subsection 1 of NRS 40.645 or
29 subsection 1 of NRS 40.682 shall provide a copy of such notice to each
30 subcontractor, supplier and design professional who the contractor
31 believes caused the defect.

32 **Sec. 9.** A person rendering an expert opinion or professional
33 opinion in a mediation required pursuant to NRS 40.680 must:

34 1. Have a license issued pursuant to chapter 624 of NRS in the
35 appropriate classification established by the provisions of NRS 624.215,
36 624.218 and 624.220 for the opinion that he is rendering; or

37 2. Have an appropriate occupational or professional license issued
38 by a board, commission or agency of the State of Nevada for the opinion
39 that he is rendering.

40 **Sec. 10.** 1. An attorney representing a person in a mediation
41 required pursuant to NRS 40.680 shall not employ an expert witness with
42 whom the attorney, a person employed by the same firm or company as
43 the attorney, a relative of the attorney or a relative of a person employed
44 by the same firm or company as the attorney has a fiduciary relationship.

45 2. An attorney representing a person in a mediation required
46 pursuant to NRS 40.680 shall not employ a consulting firm in which the
47 attorney, a person employed by the same firm or company as the
48 attorney, a relative of the attorney or a relative of a person employed by
49 the same firm or company as the attorney has a financial interest.



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1 3. As used in this section, "relative" means a spouse or any other
2 person who is related within the second degree by blood or marriage.

3 **Sec. 11.** 1. Except as otherwise provided in this section, if the
4 provisions of a policy of insurance impose a duty upon an insurer to
5 defend an action governed by NRS 40.600 to 40.695, inclusive, and
6 sections 2 to 11, inclusive, of this act and a conflict of interest exists
7 which creates a duty on the insurer to provide independent counsel to the
8 insured, the insurer shall inform the insured that a possible conflict of
9 interest may arise or exists and that the insured is required to select
10 independent counsel to represent the insured. A person who is selected as
11 independent counsel pursuant to this section shall promptly inform the
12 insurer of such selection. A contract of insurance may specify the
13 manner of selecting independent counsel pursuant to this section.

14 2. An insured is not required to select independent counsel pursuant
15 to subsection 1 if, at the time that the insured is informed that a possible
16 conflict of interest may arise or exists, the insured expressly waives in
17 writing the right to independent counsel. The right to independent
18 counsel may not be waived in the terms of a policy of insurance. The
19 insured may waive the right to independent counsel by signing a
20 statement in substantially the following form:

21
22 I have been advised and informed of my right to select
23 independent counsel to represent me in this lawsuit. I have
24 considered this matter fully, and freely waive my right to select
25 independent counsel at this time. I authorize my insurer to select a
26 defense attorney to represent me in this lawsuit.

27
28 3. The insurer may require the independent counsel selected by the
29 insured pursuant to this section to possess certain minimum
30 qualifications, including, without limitation, having:

31 (a) At least 5 years of practice in civil litigation, including, without
32 limitation, substantial experience in defending the issue involved in the
33 action; and

34 (b) Coverage for errors and omissions.

35 4. If an insured selects an independent counsel pursuant to this
36 section, any other legal counsel provided by the insurer and any other
37 independent counsel selected by the insured must be allowed to
38 participate in all aspects of the action. Each counsel participating in the
39 action shall cooperate fully in the exchange of information in a manner
40 that is consistent with his ethical and legal obligation to the insured.

41 5. The insurer shall pay all fees charged by an independent counsel
42 selected by the insured pursuant to this section if such fees are charged
43 at the rate that is customarily paid by an insurer to an attorney retained
44 by the insurer in the ordinary course of business in the defense of a
45 similar action in the community where the action arose or is being
46 defended, including, without limitation, all fees and costs reasonably
47 necessary for the defense of the insured. A dispute concerning attorney's
48 fees that are owed pursuant to this section must be resolved by final and



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- 1 *binding arbitration by a neutral arbitrator selected by the parties to the*
2 *dispute.*
- 3 6. *After an insured has selected an independent counsel pursuant to*
4 *this section, the insured and the independent counsel shall:*
- 5 (a) *Disclose to the insurer all information concerning the action,*
6 *except information concerning disputes in coverage that is privileged;*
7 *and*
- 8 (b) *Inform and consult with the insurer on all matters concerning the*
9 *action, except matters concerning disputes in coverage that are*
10 *privileged.*
- 11 7. *A claim of privilege asserted pursuant to subsection 6 is subject to*
12 *an in camera review by a court with jurisdiction over the claim.*
- 13 8. *The disclosure of information to an insurer pursuant to subsection*
14 *6 does not constitute a waiver of a privilege concerning the information*
15 *as to any other party.*
- 16 9. *The provisions of this section do not relieve an insured of his duty*
17 *to cooperate with his insurer under the terms of the contract of*
18 *insurance.*
- 19 10. *For the purposes of this section:*
- 20 (a) *A conflict of interest does not exist:*
- 21 (1) *As to allegations or facts in an action for which the insurer*
22 *denies coverage; and*
- 23 (2) *Solely because an action is brought against an insured for an*
24 *amount in excess of the limits in the policy of insurance; and*
- 25 (b) *A conflict of interest exists if an insurer provides a defense to an*
26 *action pursuant to a reservation of rights to deny coverage.*
- 27 **Sec. 12.** NRS 40.600 is hereby amended to read as follows:
28 40.600 As used in NRS 40.600 to 40.695, inclusive, *and sections 2 to*
29 *11, inclusive, of this act*, unless the context otherwise requires, the words
30 and terms defined in NRS 40.605 to 40.630, inclusive, *and sections 2, 3*
31 *and 4 of this act* have the meanings ascribed to them in those sections.
- 32 **Sec. 13.** NRS 40.645 is hereby amended to read as follows:
33 40.645 Except as otherwise provided in this section and NRS 40.670:
34 1. For a claim that is not a complex matter, at least 60 days before a
35 claimant commences an action against a contractor for damages arising
36 from a constructional defect, the claimant must give written notice by
37 certified mail, return receipt requested, to the contractor, at the contractor's
38 *last address listed in the records of the state contractors' board, or at the*
39 *contractor's last known address* ~~H~~ *if his address is not listed in the*
40 *records of the state contractors' board*, specifying in reasonable detail the
41 defects or any damages or injuries to each residence or appurtenance that is
42 the subject of the claim. The notice must describe in reasonable detail the
43 cause of the defects if the cause is known, the nature and extent that is
44 known of the damage or injury resulting from the defects and the location
45 of each defect within each residence or appurtenance to the extent known.
- 46 2. An expert opinion concerning the cause of the defects and the nature
47 and extent of the damage or injury resulting from the defects based on a
48 representative sample of the components of the residences and



1 appurtenances involved in the action satisfies the requirements of ~~this~~
2 ~~section.~~ *subsection 1.*

3 3. During the 45-day period after the contractor receives the notice ~~;~~
4 *pursuant to subsection 1*, on his written request, the contractor is entitled
5 to inspect the property that is the subject of the claim to determine the
6 nature and cause of the defect, damage or injury and the nature and extent
7 of repairs necessary to remedy the defect. The contractor shall, before
8 making the inspection, provide reasonable notice of the inspection and
9 shall make the inspection at a reasonable time. The contractor may take
10 reasonable steps to establish the existence of the defect.

11 ~~2-1~~ 4. If a residence or appurtenance that is the subject of the claim is
12 covered by a homeowner's warranty that is purchased by or on behalf of a
13 claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant
14 shall diligently pursue a claim under the contract.

15 ~~3-1~~ 5. Within 60 days after the contractor receives the notice ~~;~~
16 *pursuant to subsection 1*, the contractor shall ~~make~~ *provide* a written
17 response to the claimant. The response:

18 (a) Must be served to the claimant by certified mail, return receipt
19 requested, at the claimant's last known address ~~;~~ ~~;~~

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

26 (c) May include:

27 (1) A proposal for monetary compensation, which may include a
28 contribution from a subcontractor ~~;~~ ~~;~~

29 (2) If the contractor or his subcontractor is licensed to make the
30 repairs, an agreement by the contractor or subcontractor to make the repairs
31 ~~;~~ ~~or~~

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

35 ~~The~~ Any repairs *made pursuant to this subsection* must be made within
36 45 days after the contractor receives written notice of acceptance of the
37 response, unless completion is delayed by the claimant or by other events
38 beyond the control of the contractor, or timely completion of the repairs is
39 not reasonably possible. The claimant and the contractor may agree in
40 writing to extend the periods prescribed by this section.

41 ~~4-1~~ 6. Not later than 15 days before the mediation required pursuant
42 to NRS 40.680 and upon providing 15 days' notice, each party shall
43 provide the other party, or shall make a reasonable effort to assist the other
44 party to obtain, all relevant reports, photos, correspondence, plans,
45 specifications, warranties, contracts, subcontracts, work orders for repair,
46 videotapes, technical reports, soil and other engineering reports and other
47 documents or materials relating to the claim that are not privileged.



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1 ~~15-1~~ 7. If the claimant is a representative of a homeowner's
2 association, the association shall submit any response made by the
3 contractor to each member of the association.

4 ~~16. As used in this section, "subcontractor" means a contractor who~~
5 ~~performs work on behalf of another contractor in the construction of a~~
6 ~~residence or appurtenance.~~

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

8 40.650 1. If a claimant unreasonably rejects a reasonable written
9 offer of settlement made as part of a response made pursuant to NRS
10 40.645 or 40.682 or does not permit the contractor or independent
11 contractor a reasonable opportunity to repair the defect pursuant to an
12 accepted offer of settlement and thereafter commences an action governed
13 by NRS 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this*
14 *act*, the court in which the action is commenced may:

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

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

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

20 ~~12-1~~ 3. If a contractor fails to:

21 (a) Make an offer of settlement;

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

23 (c) Complete, in a good and workmanlike manner, the repairs specified
24 in an accepted offer;

25 (d) Agree to a mediator or accept the appointment of a mediator
26 pursuant to NRS 40.680 ; ~~for subsection 4 of NRS 40.682;~~ or

27 (e) Participate in mediation,

28 the limitations on damages and defenses to liability provided in NRS
29 40.600 to 40.695, inclusive, *and sections 2 to 11, inclusive, of this act* do
30 not apply and the claimant may commence an action without satisfying any
31 other requirement ~~to~~ *set forth in* NRS 40.600 to 40.695, inclusive ~~11~~ ,
32 *and sections 2 to 11, inclusive, of this act.*

33 ~~13-1~~ 4. If coverage under a homeowner's warranty is denied by an
34 insurer in bad faith, the homeowner and the contractor have a right of
35 action for the sums that would have been paid if coverage had been
36 provided, plus reasonable attorney's fees and costs.

37 **Sec. 15.** NRS 40.672 is hereby amended to read as follows:

38 40.672 Except as otherwise provided in NRS 40.670 ~~1-11~~ :

39 1. *If* a contractor receives written notice of a constructional defect that
40 is not part of a complex matter not more than 1 year after the close of
41 escrow of the initial purchase of the residence, the contractor shall ~~make~~
42 ~~the repairs within~~ :

43 *(a) Immediately give written notice by certified mail, return receipt*
44 *requested, to any subcontractor who the contractor believes was*
45 *responsible for the constructional defect, at the subcontractor's last*
46 *address listed in the records of the state contractors' board, or at the*
47 *subcontractor's last known address if his address is not listed in the*
48 *records of the state contractors' board, specifying in reasonable detail the*
49 *defect; and*



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1 (b) *Within 45 days after the contractor receives the written notice and*
2 *after giving a subcontractor notice and an opportunity to make the*
3 *repairs or make arrangements to have the repairs made, either make the*
4 *repairs or make arrangements satisfactory to the claimant to have the*
5 *repairs made if a subcontractor has not made the repairs or made*
6 *arrangements to have the repairs made pursuant to subsection 2* unless
7 completion *or making such arrangements* is delayed by the claimant or by
8 other events beyond the control of the contractor, or timely completion of
9 repairs is not reasonably possible. The contractor and claimant may agree
10 in writing to extend the period prescribed by this ~~section~~ paragraph.

11 2. *Within 21 days after a subcontractor receives notice pursuant to*
12 *subsection 1, the subcontractor shall either make the repairs or make*
13 *arrangements satisfactory to the claimant to have the repairs made*
14 *unless completion or making such arrangements is delayed by the*
15 *claimant or by other events beyond the control of the subcontractor, or*
16 *timely completion of repairs is not reasonably possible.*

17 3. If the contractor *or a subcontractor* fails to comply with this
18 section, he is immediately subject to discipline pursuant to NRS 624.300.

19 **Sec. 16.** NRS 40.680 is hereby amended to read as follows:

20 40.680 1. Except as otherwise provided in this chapter, before an
21 action based on a claim governed by NRS 40.600 to 40.695, inclusive, *and*
22 *sections 2 to 11, inclusive, of this act* may be commenced in court, the
23 matter must be submitted to mediation, unless mediation is waived in
24 writing by the contractor and the claimant.

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



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

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

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

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

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

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

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

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

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

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

23 (g) *In a complex matter, exercise any power set forth in Rule 53 of the*
24 *Nevada Rules of Civil Procedure.*

25 (h) *In a complex matter, subject to the provisions of this section, if the*
26 *parties fail to establish a schedule or determine a date as required*
27 *pursuant to subsection 3, 4 or 6 of NRS 40.682, establish the schedule or*
28 *determine the date.*

29 5. The special master shall not, unless otherwise agreed by the parties,
30 personally conduct any settlement conferences or engage in any ex parte
31 meetings regarding the action.

32 ~~5-1~~ 6. Upon application by a party to the court in which the action is
33 commenced, any decision or other action taken by a special master
34 appointed pursuant to this section may be appealed to the court for a
35 decision.

36 ~~6-1~~ 7. A report issued by a mediator or special master that indicates
37 that either party has failed to appear before him or to mediate in good faith
38 is admissible in the action, but a statement or admission made by either
39 party in the course of mediation is not admissible.

40 **Sec. 17.** NRS 40.682 is hereby amended to read as follows:

41 40.682 Except as otherwise provided in this section and NRS 40.670:

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

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

47 (b) At the same time and in the same manner as the claimant serves the
48 summons and complaint upon the contractor, serve upon the contractor a
49 written notice specifying in reasonable detail, to the extent known, the



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

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

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

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

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

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

31 4. At the meeting held pursuant to subsection 3, the claimant and
32 contractor shall ~~1:~~

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

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

40 ~~—(c) If the claimant and contractor agree, select a special master and~~
41 ~~jointly petition the court for his appointment pursuant to subsection 7.] ,~~
42 *including, without limitation, any subcontractor, supplier or design*
43 *professional. Not later than 60 days after the date of service of the*
44 *answer to the complaint, the claimant and contractor shall add any*
45 *additional parties to the complaint or file any third-party complaints*
46 *against any additional parties who may be responsible for all or a portion*
47 *of the constructional defects set forth in the notice served pursuant to*
48 *subsection 1.*



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

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

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

15 ~~— (a) Take any action set forth in subsection 4 of NRS 40.680;~~

16 ~~— (b) Exercise any power set forth in Rule 53 of the Nevada Rules of Civil~~
17 ~~Procedure; and~~

18 ~~— (c) Subject to the provisions of NRS 40.680, if the parties fail to~~
19 ~~establish a schedule or determine a date as required in subsection 3, 4 or 6,~~
20 ~~establish the schedule or determine the date.~~

21 ~~8.~~ Unless the mediation required pursuant to ~~paragraph (b) of~~
22 ~~subsection 4]~~ **NRS 40.680** is completed, or the contractor and claimant
23 have ~~agreed]~~ **waived such mediation** in writing, ~~[not to mediate the claim~~
24 ~~pursuant to paragraph (b) of subsection 4.]~~ a party shall not propound
25 interrogatories or requests for admission, take a deposition or file a motion
26 that is dispositive of the action except:

27 (a) Upon agreement of the parties; or

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

29 ~~9.]~~ **8.** If a residence or appurtenance that is the subject of the claim is
30 covered by a homeowner's warranty that is purchased by or on behalf of a
31 claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant
32 shall diligently pursue a claim under the contract.

33 ~~10.]~~ **9.** Unless the parties agree otherwise, not less than 60 days
34 before the date of the mediation pursuant to ~~paragraph (b) of subsection 4]~~
35 **NRS 40.680** is convened, the contractor shall ~~make]~~ **provide** a written
36 response to the claimant that meets the requirements set forth in subsection
37 ~~11.]~~ **5** of NRS 40.645.

38 ~~11.]~~ **10.** If the claimant is a representative of a homeowner's
39 association, the association shall submit any response made by the
40 contractor to each member of the association in writing not more than 30
41 days after the date the claimant receives the response.

42 ~~12.]~~ **11.** The claimant shall respond to the written response of the
43 contractor within 45 days after the response of the contractor is mailed to
44 the claimant.

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

46 40.692 If, after complying with the procedural requirements of NRS
47 40.645 and 40.680, or NRS **40.680 and** 40.682, a claimant proceeds with
48 an action for damages arising from a constructional defect:



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1 1. The claimant and each contractor *and subcontractor* who is named
2 in the original complaint when the action is commenced are not required,
3 while the action is pending, to comply with the requirements of NRS
4 40.645 or 40.680, or NRS *40.680 or* 40.682, for any constructional defect
5 that the claimant includes in an amended complaint, if the constructional
6 defect:

7 (a) Is attributable, in whole or in part, to such a contractor ~~or~~ *or*
8 *subcontractor*;

9 (b) Is located on the same property described in the original complaint;
10 and

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

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

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

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

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

24 40.695 1. Except as otherwise provided in subsection 2, statutes of
25 limitation or repose applicable to a claim based on a constructional defect
26 governed by NRS 40.600 to 40.695, inclusive, *and sections 2 to 11,*
27 *inclusive, of this act* are tolled from the time notice of the claim is given,
28 until 30 days after mediation is concluded or waived in writing pursuant to
29 NRS 40.680. ~~for subsection 4 of NRS 40.682.~~

30 2. Tolling under this section applies:

31 (a) Only to a claim that is not a complex matter.

32 (b) To a third party regardless of whether the party is required to appear
33 in the proceeding.

34 **Sec. 20.** Chapter 116 of NRS is hereby amended by adding thereto a
35 new section to read as follows:

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

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

44 3. *A member or officer of an executive board shall not accept*
45 *anything of value given to him in exchange for encouraging the*
46 *association of which he is a member or officer of the executive board to*
47 *file a claim for damages arising from a constructional defect.*

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



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

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

8 5. *If a member or officer of an executive board violates the*
9 *provisions of this section, the executive board shall remove the officer or*
10 *member from the board.*

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

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

15 **Sec. 21.** NRS 116.1203 is hereby amended to read as follows:

16 116.1203 1. Except as otherwise provided in subsection 2, if a
17 planned community contains no more than 12 units and is not subject to
18 any developmental rights, it is subject only to NRS 116.1105, 116.1106
19 and 116.1107 unless the declaration provides that this entire chapter is
20 applicable.

21 2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138,
22 ~~NRS~~ 116.3101 to 116.3119, inclusive, *and section 20 of this act* and
23 116.110305 to 116.110393, inclusive, to the extent necessary in construing
24 any of those sections, apply to a residential planned community containing
25 more than six units.

26 **Sec. 22.** NRS 116.311 is hereby amended to read as follows:

27 116.311 1. If only one of several owners of a unit is present at a
28 meeting of the association, that owner is entitled to cast all the votes
29 allocated to that unit. If more than one of the owners are present, the votes
30 allocated to that unit may be cast only in accordance with the agreement of
31 a majority in interest of the owners, unless the declaration expressly
32 provides otherwise. There is majority agreement if any one of the owners
33 cast the votes allocated to that unit without protest made promptly to the
34 person presiding over the meeting by any of the other owners of the unit.

35 2. Except as otherwise provided in this section, votes allocated to a
36 unit may be cast pursuant to a proxy executed by a unit's owner. A unit's
37 owner may give a proxy only to a member of his immediate family, a
38 tenant of the unit's owner who resides in the common-interest community
39 or another unit's owner who resides in the common-interest community. If
40 a unit is owned by more than one person, each owner of the unit may vote
41 or register protest to the casting of votes by the other owners of the unit
42 through an executed proxy. A unit's owner may revoke a proxy given
43 pursuant to this section only by actual notice of revocation to the person
44 presiding over a meeting of the association. A proxy is void if:

45 (a) It is not dated or purports to be revocable without notice;

46 (b) It does not designate the votes that must be cast on behalf of the
47 unit's owner who executed the proxy; or

48 (c) The holder of the proxy does not disclose at the beginning of the
49 meeting for which the proxy is executed the number of proxies pursuant to



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1 which he will be casting votes and the voting instructions received for each
2 proxy.

3 A proxy terminates immediately after the conclusion of the meeting for
4 which it was executed. A vote may not be cast pursuant to a proxy for the
5 election of a member of the executive board of an association ~~+~~ *or for the*
6 *ratification of an action pursuant to paragraph (e) of subsection 9 of*
7 *NRS 116.3115.*

8 3. Only a vote cast in person, by secret ballot or by proxy, may be
9 counted.

10 4. If the declaration requires that votes on specified matters affecting
11 the common-interest community be cast by lessees rather than units'
12 owners of leased units:

13 (a) The provisions of subsections 1 and 2 apply to lessees as if they
14 were units' owners;

15 (b) Units' owners who have leased their units to other persons may not
16 cast votes on those specified matters; and

17 (c) Lessees are entitled to notice of meetings, access to records, and
18 other rights respecting those matters as if they were units' owners.

19 Units' owners must also be given notice, in the manner provided in NRS
20 116.3108, of all meetings at which lessees are entitled to vote.

21 5. No votes allocated to a unit owned by the association may be cast.

22 6. Votes cast for the election of a member of the executive board of an
23 association must be counted in public.

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

25 116.31139 1. An association may employ a person engaged in
26 property management for the common-interest community.

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

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

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

33 3. The real estate commission shall provide by regulation for the
34 issuance of certificates for the management of common-interest
35 communities to persons who are not otherwise authorized to engage in
36 property management pursuant to the provisions of chapter 645 of NRS.
37 The regulations:

38 (a) Must establish the qualifications for the issuance of such a
39 certificate, including the education and experience required to obtain such
40 a certificate;

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

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

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



1 (e) Must establish rules of practice and procedure for conducting
2 disciplinary hearings.

3 The real estate division of the department of business and industry may
4 investigate the property managers to whom certificates have been issued to
5 ensure their compliance with *section 20 of this act and* the standards of
6 practice adopted pursuant to this subsection and collect a fee for the
7 issuance of a certificate by the commission in an amount not to exceed the
8 administrative costs of issuing the certificate.

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

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

15 (b) A financial institution.

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

17 (d) A trustee.

18 (e) An employee of a corporation who manages only the property of the
19 corporation.

20 (f) A declarant.

21 (g) A receiver.

22 5. As used in this section, "property management" means the physical,
23 administrative or financial maintenance and management of real property,
24 or the supervision of those activities for a fee, commission or other
25 compensation or valuable consideration.

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

27 116.3115 1. Until the association makes an assessment for common
28 expenses, the declarant shall pay all common expenses. After an
29 assessment has been made by the association, assessments must be made at
30 least annually, based on a budget adopted at least annually by the
31 association in accordance with the requirements set forth in NRS
32 116.31151. Except for an association for a time-share project governed by
33 the provisions of chapter 119A of NRS, and unless the declaration imposes
34 more stringent standards, the budget must include a budget for the daily
35 operation of the association and the money for the reserve required by
36 paragraph (b) of subsection 2.

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

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

41 (b) The association shall establish an adequate reserve, funded on a
42 reasonable basis, for the repair, replacement and restoration of the major
43 components of the common elements. The reserve may be used only for
44 those purposes, including, without limitation, repairing, replacing and
45 restoring roofs, roads and sidewalks, and must not be used for daily
46 maintenance.

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



1 4. To the extent required by the declaration:

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

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

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

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

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

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

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

22 9. The association shall provide written notice *by certified mail, return*
23 *receipt requested*, to the owner of each unit of a meeting at which an
24 assessment for a capital improvement or the commencement of a civil
25 action is to be considered or action is to be taken on such an assessment at
26 least 21 calendar days before the meeting. Except as otherwise provided in
27 this subsection, the association may commence a civil action only upon a
28 vote ~~for written agreement~~ of the owners of units to which at least a
29 majority of the votes of the members of the association are allocated ~~that~~ ,
30 *taken at a scheduled meeting*. The provisions of this subsection do not
31 apply to a civil action that is commenced:

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

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

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

36 (d) To proceed with a counterclaim; or

37 (e) To protect the health, safety and welfare of the members of the
38 association ~~that~~ *from an imminent risk of loss of life or serious and*
39 *permanent damage to property*. If a civil action is commenced pursuant to

40 this paragraph without the required vote or agreement, the action must be
41 ratified within ~~90~~ 30 days after the commencement of the action ~~by~~

42 *upon* a vote ~~for written agreement~~ of the owners of the units to which at
43 least a majority of *the* votes of the members of the association are

44 allocated. If the ~~association, after making a good faith effort, cannot obtain~~
45 ~~the required vote or agreement to commence or ratify such a civil action,~~

46 *action is not so ratified*, the association ~~may thereafter seek~~ *shall file a*
47 *special motion* to dismiss the action *and the court shall dismiss the action*

48 without prejudice for ~~that reason only if a vote or written agreement of the~~
49 ~~owners of the units to which at least a majority of votes of the members of~~



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1 ~~the association are allocated was obtained at the time the approval to~~
2 ~~commence or ratify the action was sought.]~~ *failure to comply with this*
3 *paragraph.*

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

8 (a) A reasonable estimate of the costs of the civil action, including ,
9 *without limitation*, reasonable attorney's fees ~~and~~ *and fees for experts and*
10 *other witnesses;*

11 (b) *An explanation that the costs and fees required to be paid in*
12 *connection with the civil action will be paid before the units' owners*
13 *receive money as a result of the civil action, and an explanation that the*
14 *amount of money paid for such costs and fees may be greater than the*
15 *amount of money available to compensate the units' owners;*

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

20 ~~(e)~~ (d) All disclosures that are required to be made upon the sale of
21 the property.

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

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

26 119A.165 1. If a matter governed by this chapter is also governed by
27 chapter 116 of NRS, compliance with the provisions of chapter 116 of
28 NRS governing the matter which are in addition to or different from the
29 provisions in this chapter governing the same matter is not required. In the
30 event of a conflict between provisions of this chapter and chapter 116 of
31 NRS, the provisions of this chapter prevail.

32 2. Without limiting the generality of subsection 1, the provisions of
33 NRS 116.11145, 116.12065, 116.3103, 116.31031, 116.31034, 116.3106,
34 116.31065, 116.3108 to 116.311, inclusive, 116.31139, 116.31145 to
35 116.31158, inclusive, 116.31162, 116.31175, 116.31177, 116.41095 and
36 116.4117 *and section 20 of this act* do not apply to a time share or a time-
37 share project.

38 **Sec. 26.** NRS 247.180 is hereby amended to read as follows:

39 247.180 Except as otherwise provided in NRS 111.312, whenever an
40 instrument conveying, encumbering or mortgaging both real and personal
41 property *or a notice filed pursuant to section 7 of this act* is presented to
42 any county recorder for recording, the county recorder shall record the
43 instrument in a book kept by him for that purpose, which record must be
44 indexed in the real estate index as deeds and other conveyances are
45 required by law to be indexed, and for which he may receive the same fees
46 as are allowed by law for recording and indexing deeds and other
47 instruments, but only one fee for the recording of any instrument may be
48 collected.



1 **Sec. 27.** Chapter 624 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 *A contractor who develops, constructs or landscapes a new residence*
4 *shall, not later than 30 days after the close of escrow of the initial*
5 *purchase of the residence, provide in writing to the initial purchaser of*
6 *the residence the name, license number, business address and telephone*
7 *number of each subcontractor who performed any work related to such*
8 *development, construction or landscaping of the residence.*

9 **Sec. 28.** NRS 624.3016 is hereby amended to read as follows:

10 624.3016 The following acts or omissions, among others, constitute
11 cause for disciplinary action under NRS 624.300:

12 1. Any fraudulent or deceitful act committed in the capacity of a
13 contractor.

14 2. A conviction of a violation of NRS 624.730 or a felony or a crime
15 involving moral turpitude.

16 3. Knowingly making a false statement in or relating to the recording
17 of a notice of lien pursuant to the provisions of NRS 108.226.

18 4. Failure to give a notice required by NRS 108.245 or 108.246.

19 5. Failure to comply with NRS 597.713, 597.716 or 597.719 or any
20 regulations of the board governing contracts for the construction of
21 residential pools and spas.

22 6. Failure to comply with NRS 624.600 **H** *or section 27 of this act.*

23 7. Misrepresentation or the omission of a material fact, or the
24 commission of any other fraudulent or deceitful act, to obtain a license.

25 8. Failure to pay an assessment required pursuant to NRS 624.470.

26 **Sec. 29.** NRS 645.6052 is hereby amended to read as follows:

27 645.6052 1. A person who is licensed pursuant to this chapter as a
28 real estate broker, real estate broker-salesman or real estate salesman may
29 apply to the real estate division for a permit to engage in property
30 management.

31 2. An applicant for a permit must:

32 (a) Furnish proof satisfactory to the division that he has successfully
33 completed at least 24 classroom hours of instruction in property
34 management; and

35 (b) Comply with all other requirements established by the commission
36 for the issuance of a permit.

37 3. A permit expires, and may be renewed, at the same time as the
38 license of the holder of the permit.

39 4. An applicant for the renewal of a permit must:

40 (a) Furnish proof satisfactory to the division that he has successfully
41 completed at least 3 of the hours of the continuing education required for
42 the renewal of his license pursuant to NRS 645.575 in an approved
43 educational course, seminar or conference concerning property
44 management; and

45 (b) Comply with all other requirements established by the commission
46 for the renewal of a permit.

47 5. The commission may adopt such regulations as it determines are
48 necessary to carry out the provisions of this section **H** *and section 20 of*
49 *this act.* The regulations may, without limitation:



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1 (a) Establish additional requirements for the issuance or renewal of a
2 permit.

3 (b) Establish a fee for the issuance and renewal of a permit.

4 (c) Set forth standards of education for the approval of a course of
5 instruction to qualify a person for a permit pursuant to this section.

6 **Sec. 30.** The amendatory provisions of this act do not apply to a claim
7 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
8 inclusive, and sections 2 to 11, inclusive, of this act, unless the claim was
9 initiated or the action was commenced on or after October 1, 2001.

10 **Sec. 31.** The amendatory provisions of section 20 of this act do not
11 apply to offenses committed before October 1, 2001.

