

SENATE BILL NO. 516—COMMITTEE ON COMMERCE AND LABOR

MARCH 26, 2001

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning contractors and constructional defects.
(BDR 54-1452)

FISCAL NOTE: Effect on Local Government: Yes.
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 a 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 a claim of a constructional defect; requiring a contractor to disclose certain information to the purchaser of a new residence; revising the definition of a constructional defect; eliminating mandatory mediation and revising procedures in cases involving a constructional defect; revising provisions concerning common-interest communities; providing a penalty; 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:



- 1 **Section 1.** Chapter 624 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 13, inclusive, of this act.
- 3 **Sec. 2.** *As used in sections 2 to 12, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in section 3 to 6,*
5 *inclusive, of this act have the meanings ascribed to them in those*
6 *sections.*
- 7 **Sec. 3.** *“Claimant” has the meaning ascribed to it in NRS 40.610.*
- 8 **Sec. 4.** *“Constructional defect” has the meaning ascribed to it in*
9 *NRS 40.615.*
- 10 **Sec. 5.** *“Contractor” has the meaning ascribed to it in NRS 40.620.*
- 11 **Sec. 6.** *“Subcontractor” has the meaning ascribed to it in section 20*
12 *of this act.*
- 13 **Sec. 7.** 1. *The board shall review each claim of a constructional*
14 *defect submitted to it pursuant to NRS 40.680.*
- 15 2. *A claim of a constructional defect is properly presented to the*
16 *board by submitting a copy of the written notice of constructional defects*
17 *provided to a contractor by a claimant pursuant to subsection 1 of NRS*
18 *40.645 or subsection 1 of NRS 40.682.*
- 19 3. *After a claimant has presented a claim to the board pursuant to*
20 *subsection 2, a contractor shall immediately provide:*
- 21 (a) *A copy of his response to the claimant’s written notice of*
22 *constructional defects that he prepared pursuant to NRS 40.645 or*
23 *40.682, as applicable, to the board;*
- 24 (b) *A written summary identifying each subcontractor who the*
25 *contractor reasonably believes performed the original construction which*
26 *is alleged to be a constructional defect; and*
- 27 (c) *A written notice that a claimant has submitted a claim to the board*
28 *for review pursuant to subsection 2 to each subcontractor who the*
29 *contractor has identified as having performed the original construction*
30 *which is alleged to be a constructional defect.*
- 31 4. *The board shall investigate each claim submitted to the board*
32 *pursuant to subsection 1. The investigation must be completed within 30*
33 *days after the claim is submitted to the board pursuant to subsection 2.*
- 34 5. *Upon completion of the investigation, the board shall issue an*
35 *advisory opinion concerning the claim of a constructional defect not*
36 *later than 2 weeks after the investigation is completed.*
- 37 **Sec. 8.** *As part of the investigation conducted pursuant to section 7*
38 *of this act, the board may hold a hearing on a claim of a constructional*
39 *defect submitted to the board pursuant to section 7 of this act after giving*
40 *notice of the time, place and nature of the hearing:*
- 41 1. *If the board, in its discretion, determines that a hearing is*
42 *necessary; or*
- 43 2. *Upon the written request of:*
- 44 (a) *The claimant;*
- 45 (b) *The contractor; or*
- 46 (c) *A subcontractor who the contractor has identified pursuant to*
47 *section 7 of this act as having performed the original construction which*
48 *is alleged to be a constructional defect.*



- 1 *Sec. 9. 1. If the board issues an advisory opinion pursuant to*
2 *section 7 of this act that is, at least in part, favorable to the claimant, the*
3 *board shall send a written order by certified mail to the contractor and to*
4 *the last known address of each subcontractor, if any, who has been*
5 *notified of the claim pursuant to section 7 of this act and who has been*
6 *identified by the contractor as having performed the original*
7 *construction which, in the opinion of the board, constitutes a*
8 *constructional defect, directing the contractor and subcontractor, if*
9 *applicable, to make repairs consistent with the order of the board*
10 *pursuant to this section.*
11 2. *A subcontractor who receives a written order from the board*
12 *pursuant to subsection 1, shall, within 10 days after receiving the notice,*
13 *provide written notice to the board, the contractor and the claimant*
14 *indicating whether the subcontractor, at the subcontractor's expense,*
15 *will comply with the order by making the repairs specified in the order. If*
16 *a subcontractor provides a written notice of intent to comply with an*
17 *order pursuant to this section, except as otherwise provided in subsection*
18 *6, the subcontractor must complete the repairs in the time specified by*
19 *the board in the order.*
20 3. *A contractor who receives a written order pursuant to subsection 1*
21 *shall make repairs, at the contractor's expense, if the contractor is*
22 *licensed to make the repairs, or cause the repairs to be made, at the*
23 *contractor's expense, by another contractor who is licensed to make the*
24 *repairs, bonded and insured, if a subcontractor who was sent a written*
25 *order pursuant to subsection 1:*
26 (a) *Fails to provide a written notice of intent to comply with the order*
27 *of the board within the time specified in the order pursuant to subsection*
28 2;
29 (b) *Provides a timely written response to the order of the board*
30 *indicating a refusal to make the repairs specified in the order; or*
31 (c) *Fails, within the time specified in the order of the board, to make*
32 *repairs or cause repairs to be made after providing a written notice of*
33 *intent to comply with the order of the board.*
34 4. *Except as otherwise provided in subsection 6, any repairs ordered*
35 *pursuant to this section must be completed within the time provided by*
36 *the board in the order.*
37 5. *The order is effective upon such service, unless the board orders*
38 *otherwise.*
39 6. *A contractor or subcontractor may petition the board, by written*
40 *request supported by an affidavit of the contractor or subcontractor, for*
41 *an extension of the time for completion of repairs if completion is*
42 *delayed by:*
43 (a) *The claimant;*
44 (b) *A subcontractor who has failed to make repairs or cause repairs to*
45 *be made after providing a notice of intent to comply with the order of the*
46 *board pursuant to subsection 2; or*
47 (c) *Other events beyond the control of the contractor or subcontractor,*
48 *or if timely completion of the repairs is not reasonably possible.*



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



1 *1. The name, license number, business address and telephone*
2 *number of each subcontractor who performed any work related to such*
3 *development, construction or landscaping of the residence; and*

4 *2. A brief description of the work performed by each subcontractor*
5 *identified in subsection 1.*

6 **Sec. 14.** NRS 624.020 is hereby amended to read as follows:

7 624.020 1. ~~For the purpose of~~ *As used in* this chapter, ~~“contractor”~~
8 ~~is synonymous with “builder.”~~

9 ~~2. Within the meaning of this chapter, a contractor is~~ *unless the*
10 *context otherwise requires, “contractor”:*

11 *(a) Means* any person, except a registered architect or a licensed
12 professional engineer, acting solely in his professional capacity, who in any
13 capacity other than as the employee of another with wages as the sole
14 compensation, undertakes to, or offers to undertake to, or purports to have
15 the capacity to undertake to, or submits a bid to, or does himself or by or
16 through others, construct, alter, repair, add to, subtract from, improve,
17 move, wreck or demolish any building, highway, road, railroad, excavation
18 or other structure, project, development or improvement, or to do any part
19 thereof, including the erection of scaffolding or other structures or works in
20 connection therewith.

21 *(b) Is synonymous with “builder.”*

22 **2.** Evidence of the securing of any permit from a governmental agency
23 or the employment of any person on a construction project must be
24 accepted by the board or any court of this state as prima facie evidence that
25 the person securing that permit or employing any person on a construction
26 project is acting in the capacity of a contractor pursuant to the provisions of
27 this chapter.

28 3. A contractor ~~within the meaning of this chapter~~ includes :

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

32 ~~4. A contractor within the meaning of this chapter includes a~~

33 *(b) A* construction manager who performs management and counseling
34 services on a construction project for a professional fee.

35 **Sec. 15.** NRS 624.3016 is hereby amended to read as follows:

36 624.3016 The following acts or omissions, among others, constitute
37 cause for disciplinary action under NRS 624.300:

38 1. Any fraudulent or deceitful act committed in the capacity of a
39 contractor.

40 2. A conviction of a violation of NRS 624.730 or a felony or a crime
41 involving moral turpitude.

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

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

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

48 6. Failure to comply with NRS 624.600 ~~H~~ *and section 13 of this act.*



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1 7. Misrepresentation or the omission of a material fact, or the
2 commission of any other fraudulent or deceitful act, to obtain a license.
3 8. Failure to pay an assessment required pursuant to NRS 624.470.

4 **Sec. 16.** NRS 624.302 is hereby amended to read as follows:

5 624.302 The following acts or omissions, among others, constitute
6 cause for disciplinary action pursuant to NRS 624.300:

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

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

10 (b) Is inactive.

11 2. Failure to comply with a written citation issued pursuant to NRS
12 624.341 within the time permitted for compliance set forth in the citation
13 ~~or~~ or, if a hearing is held pursuant to NRS 624.291, within 15 business
14 days after the hearing.

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

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

18 (b) The final administrative or judicial decision affirming the imposition
19 of the fine,
20 whichever occurs later.

21 4. The suspension, revocation or other disciplinary action taken by
22 another state against a contractor based on a license issued by that state if
23 the contractor is licensed in this state or applies for a license in this state. A
24 certified copy of the suspension, revocation or other disciplinary action
25 taken by another state against a contractor based on a license issued by that
26 state is conclusive evidence of that action.

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

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

32 *7. Failure or refusal to comply with a written order issued pursuant
33 to section 9 of this act within the time required for completion of repairs
34 set forth in the order.*

35 **Sec. 17.** NRS 645.6052 is hereby amended to read as follows:

36 645.6052 1. A person who is licensed pursuant to this chapter as a
37 real estate broker, real estate broker-salesman or real estate salesman may
38 apply to the real estate division for a permit to engage in property
39 management.

40 2. An applicant for a permit must:

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

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

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

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



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

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

8 5. The commission may adopt such regulations as it determines are
9 necessary to carry out the provisions of this section ~~§~~ *and section 40 of*
10 *this act*. The regulations may, without limitation:

11 (a) Establish additional requirements for the issuance or renewal of a
12 permit.

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

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

16 **Sec. 18.** Chapter 40 of NRS is hereby amended by adding thereto the
17 provisions set forth as sections 19 to 23, inclusive, of this act.

18 **Sec. 19.** *“Design professional” means a person with a professional*
19 *license or certificate issued pursuant to chapter 623, 623A or 625 of*
20 *NRS.*

21 **Sec. 20.** *“Subcontractor” means a contractor who performs work on*
22 *behalf of another contractor in the construction of a residence or*
23 *appurtenance.*

24 **Sec. 21.** *A person rendering an expert opinion or professional*
25 *opinion in a matter governed by NRS 40.600 to 40.695, inclusive, and*
26 *sections 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of*
27 *this act must:*

28 1. *Have a license issued pursuant to chapter 624 of NRS in the*
29 *appropriate classification established by the provisions of NRS 624.215,*
30 *624.218 and 624.220 for the trade or skill for which he is rendering an*
31 *opinion; or*

32 2. *Have an appropriate occupational or professional license issued*
33 *by a board, commission or agency of the State of Nevada for the trade or*
34 *skill upon which he is rendering an opinion.*

35 **Sec. 22.** 1. *An attorney representing a person in a matter governed*
36 *by the provisions of NRS 40.600 to 40.695, inclusive, and sections 19 to*
37 *23, inclusive, of this act, and sections 2 to 12, inclusive, of this act shall*
38 *not employ an expert witness with whom the attorney, a person employed*
39 *by the same firm or company as the attorney, a relative of the attorney or*
40 *a relative of a person employed by the same firm or company as the*
41 *attorney has a fiduciary relationship.*

42 2. *An attorney representing a person in a matter governed by the*
43 *provisions of NRS 40.600 to 40.695, inclusive, and sections 19 to 23,*
44 *inclusive, of this act, and sections 2 to 12, inclusive, of this act shall not*
45 *employ a consulting firm in which the attorney, a person employed by the*
46 *same firm or company as the attorney, a relative of the attorney or a*
47 *relative of a person employed by the same firm or company as the*
48 *attorney has a financial interest.*



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. 23.** 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 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of
7 this act and a conflict of interest exists which creates a duty on the
8 insurer to provide independent counsel to the insured, the insurer shall
9 inform the insured that a possible conflict of interest may arise or exists
10 and that the insured is required to select independent counsel to
11 represent the insured unless he signs a waiver pursuant to subsection 2.
12 A person who is selected as independent counsel pursuant to this section
13 shall promptly inform the insurer of such selection. A contract of
14 insurance may specify the manner of selecting independent counsel
15 pursuant to this section.

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

23
24 *I have been advised and informed of my right to select independent*
25 *counsel to represent me in this lawsuit. I have considered this matter*
26 *fully, and freely waive my right to select independent counsel at this*
27 *time. I authorize my insurer to select a defense attorney to represent*
28 *me in this lawsuit.*
29

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

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

36 (b) Coverage for errors and omissions.

37 4. The insurer shall pay all fees charged by an independent counsel
38 selected by the insured pursuant to this section, including, without
39 limitation, all fees and costs reasonably necessary for the defense of the
40 insured. A dispute concerning attorney's fees that are owed pursuant to
41 this section must be resolved by final and binding arbitration by a neutral
42 arbitrator selected by the parties to the dispute.

43 5. After an insured has selected an independent counsel pursuant to
44 this section, the insured and the independent counsel shall:

45 (a) Disclose to the insurer all information concerning the action,
46 except information concerning disputes in coverage that is privileged;
47 and



1 (b) Inform and consult with an insurer on all matters concerning the
2 action, except matters concerning disputes in coverage that are
3 privileged.

4 6. A claim of privilege asserted pursuant to subsection 5 is subject to
5 an in camera review by a court with jurisdiction over the claim.

6 7. The disclosure of information to an insurer pursuant to subsection
7 5 does not constitute a waiver of a privilege concerning the information
8 as to any other party.

9 8. The provisions of this section do not relieve an insured of his duty
10 to cooperate with his insurer under the terms of the contract of
11 insurance.

12 9. For the purposes of this section, a conflict of interest exists in
13 circumstances which include, without limitation, when an insurer
14 provides a defense to an action pursuant to a reservation of rights which
15 reserves the right to deny coverage.

16 Sec. 24. NRS 40.600 is hereby amended to read as follows:

17 40.600 As used in NRS 40.600 to 40.695, inclusive, *and sections 19 to*
18 *23, inclusive, of this act*, unless the context otherwise requires, the words
19 and terms defined in NRS 40.605 to 40.630, inclusive, *and sections 19 and*
20 *20 of this act* have the meanings ascribed to them in those sections.

21 Sec. 25. NRS 40.615 is hereby amended to read as follows:

22 40.615 "Constructional defect" ~~includes a defect in the design,~~
23 ~~construction, manufacture, repair or landscaping of a new residence, of an~~
24 ~~alteration of or addition to an existing residence, or of an appurtenance.~~
25 ~~The term includes physical damage to the~~ *means a condition that*
26 *materially affects the value or use of a* residence, an appurtenance or the
27 real property to which the residence or appurtenance is affixed. ~~that is~~
28 ~~proximately caused by a constructional defect.~~ *in an adverse manner.*

29 Sec. 26. NRS 40.635 is hereby amended to read as follows:

30 40.635 NRS 40.600 to 40.695, inclusive ~~11~~, *and sections 19 to 23,*
31 *inclusive, of this act, and sections 2 to 12, inclusive, of this act:*

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

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

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

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

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

42 40.645 Except as otherwise provided in this section and NRS 40.670:

43 1. For a claim that is not a complex matter, ~~at least 60 days~~ before a
44 claimant *submits a claim of a constructional defect to the state*
45 *contractors' board for review pursuant to NRS 40.680 and sections 2 to*
46 *12, inclusive, of this act and before a claimant* commences an action
47 against a contractor for damages arising from a constructional defect, the
48 claimant must give written notice by certified mail, return receipt
49 requested, to the contractor, at the contractor's last known address,



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

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

23 3. *Within 10 days after the contractor receives the notice, the*
24 *contractor shall provide a copy of the notice of defects to each*
25 *subcontractor and each design professional who the contractor*
26 *reasonably believes performed the original construction or design work*
27 *which is alleged to be a constructional defect.*

28 4. *During the 45 days after the contractor receives the notice from*
29 *the claimant, the contractor shall:*

30 (a) *Before conducting any inspection or test of the residence or*
31 *appurtenance, provide notice of the inspection or test in writing by*
32 *certified mail to each subcontractor and design professional to whom*
33 *notice was provided pursuant to subsection 3 of his last known address;*
34 *and*

35 (b) *Allow each subcontractor and design professional to whom notice*
36 *was provided pursuant to subsection 3 to jointly and severally conduct*
37 *any testing of the residence or appurtenance at the time the contractor is*
38 *allowed to conduct such testing.*

39 5. Within 60 days after the contractor receives the notice, the
40 contractor shall make a written response to the claimant. The response:

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

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

49 (c) May include:



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

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

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

9 The repairs must be made within 45 days after the contractor receives
10 written notice of acceptance of the response, unless completion is delayed
11 by the claimant or by other events beyond the control of the contractor, or
12 timely completion of the repairs is not reasonably possible. The claimant
13 and the contractor may agree in writing to extend the periods prescribed by
14 this section.

15 ~~{4. Not later than 15 days before the mediation required pursuant to~~
16 ~~NRS 40.680 and upon providing 15 days' notice, each party shall provide~~
17 ~~the other party, or shall make a reasonable effort to assist the other party to~~
18 ~~obtain, all relevant reports, photos, correspondence, plans, specifications,~~
19 ~~warranties, contracts, subcontracts, work orders for repair, videotapes,~~
20 ~~technical reports, soil and other engineering reports and other documents or~~
21 ~~materials relating to the claim that are not privileged.~~

22 ~~—5.†~~ 6. If the claimant is a representative of a homeowner's association,
23 the association shall submit any response made by the contractor to each
24 member of the association.

25 ~~{6. As used in this section, "subcontractor" means a contractor who~~
26 ~~performs work on behalf of another contractor in the construction of a~~
27 ~~residence or appurtenance.†~~

28 **Sec. 28.** NRS 40.650 is hereby amended to read as follows:

29 40.650 1. If a claimant unreasonably rejects a reasonable written
30 offer of settlement made as part of a response made pursuant to NRS
31 40.645 or 40.682 or does not permit the contractor or independent
32 contractor a reasonable opportunity to repair the defect pursuant to an
33 accepted offer of settlement and thereafter commences an action governed
34 by NRS 40.600 to 40.695, inclusive, *and sections 19 to 23, inclusive, of*
35 *this act, and sections 2 to 12, inclusive, of this act*, the court in which the
36 action is commenced may:

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

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

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

42 2. If a contractor fails to:

43 (a) Make an offer of settlement;

44 (b) Make a good faith response to the claim asserting no liability; *or*

45 (c) Complete, in a good and workmanlike manner, the repairs specified
46 in an accepted offer, ~~†~~

47 ~~—(d) Agree to a mediator or accept the appointment of a mediator~~
48 ~~pursuant to NRS 40.680 or subsection 4 of NRS 40.682; or~~

49 ~~—(e) Participate in mediation.†~~



1 the limitations on damages and defenses to liability provided in NRS
2 40.600 to 40.695, inclusive, *and sections 19 to 23, inclusive, of this act,*
3 *and sections 2 to 12, inclusive, of this act* do not apply. ~~and the claimant~~
4 ~~may commence an action without satisfying any other requirement of NRS~~
5 ~~40.600 to 40.695, inclusive.~~

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

10 **Sec. 29.** NRS 40.655 is hereby amended to read as follows:

11 40.655 1. Except as otherwise provided in NRS 40.650 ~~§~~ *and*
12 *section 9 of this act,* in a claim governed by NRS 40.600 to 40.695,
13 inclusive, *and sections 19 to 23, inclusive, of this act, and sections 2 to*
14 *12, inclusive, of this act,* the claimant may recover only the following
15 damages to the extent proximately caused by a constructional defect:

- 16 (a) Any reasonable attorney's fees;
17 (b) The reasonable cost of any repairs already made that were necessary
18 and of any repairs yet to be made that are necessary to cure any
19 constructional defect that the contractor failed to cure and the reasonable
20 expenses of temporary housing reasonably necessary during the repair;
21 (c) The reduction in market value of the residence or accessory
22 structure, if any, to the extent the reduction is because of structural failure;
23 (d) The loss of the use of all or any part of the residence;
24 (e) The reasonable value of any other property damaged by the
25 constructional defect;
26 (f) Any additional costs reasonably incurred by the claimant, including,
27 but not limited to, any costs and fees incurred for the retention of experts
28 to:

- 29 (1) Ascertain the nature and extent of the constructional defects;
30 (2) Evaluate appropriate corrective measures to estimate the value of
31 loss of use; and
32 (3) Estimate the value of loss of use, the cost of temporary housing
33 and the reduction of market value of the residence; and
34 (g) Any interest provided by statute.

35 2. The amount of any attorney's fees awarded pursuant to this section
36 must be approved by the court.

37 3. If a contractor complies with the provisions of NRS 40.600 to
38 40.695, inclusive, *and sections 19 to 23, inclusive, of this act,* the claimant
39 may not recover from the contractor, as a result of the constructional
40 defect, anything other than that which is provided pursuant to NRS 40.600
41 to 40.695, inclusive ~~§~~ *, and sections 19 to 23, inclusive, of this act.*

42 4. As used in this section, "structural failure" means physical damage
43 to the load-bearing portion of a residence or appurtenance caused by a
44 failure of the load-bearing portion of the residence or appurtenance.

45 **Sec. 30.** NRS 40.668 is hereby amended to read as follows:

46 40.668 1. Notwithstanding the provisions of NRS 40.600 to 40.695,
47 inclusive, *and sections 19 to 23, inclusive, of this act, and sections 2 to*
48 *12, inclusive, of this act,* a claimant may not commence an action against a
49 subdivider or master developer for a constructional defect in an



1 appurtenance constructed on behalf of the subdivider or master developer
2 in a planned unit development, to the extent that the appurtenance was
3 constructed by or through a licensed general contractor, unless:

4 (a) The subdivider or master developer fails to provide to the claimant
5 the name, address and telephone number of each contractor hired by the
6 subdivider or master developer to construct the appurtenance within 30
7 days of the receipt by the subdivider or master developer of a request from
8 the claimant for such information; or

9 (b) After the claimant has made a good faith effort to obtain full
10 recovery from the contractors hired by the subdivider or master developer
11 to construct the appurtenance, the claimant has not obtained a full
12 recovery.

13 2. All statutes of limitation or repose applicable to a claim governed by
14 this section are tolled from the time the claimant notifies a contractor hired
15 by the subdivider or master developer of the claim until the earlier of the
16 date:

17 (a) A court determines that the claimant cannot obtain a full recovery
18 against those contractors; or

19 (b) The claimant receives notice that those contractors are bankrupt,
20 insolvent or dissolved.

21 Tolling pursuant to this subsection applies only to the subdivider or master
22 developer. Notwithstanding any applicable statute of limitation or repose,
23 the claimant may commence an action against the subdivider or master
24 developer for the claim within 1 year after the end of the tolling described
25 in this subsection.

26 3. ~~Nothing in this section prohibits~~ *This section does not prohibit* the
27 commencement of an action against a subdivider or master developer for a
28 constructional defect in a residence sold, designed or constructed by or on
29 behalf of the subdivider or master developer.

30 4. ~~Nothing in this section prohibits~~ *This section does not prohibit* a
31 person other than the claimant from commencing an action against a
32 subdivider or master developer to enforce his own rights.

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

37 6. As used in this section:

38 (a) “Master developer” means a person who buys, sells or develops a
39 planned unit development, including, without limitation, a person who
40 enters into a development agreement pursuant to NRS 278.0201.

41 (b) “Planned unit development” has the meaning ascribed to it in NRS
42 278A.065.

43 (c) “Subdivider” has the meaning ascribed to it in NRS 278.0185.

44 **Sec. 31.** NRS 40.675 is hereby amended to read as follows:

45 40.675 1. A contractor *or subcontractor* who makes or provides for
46 repairs under NRS 40.600 to 40.695, inclusive, *and sections 19 to 23,*
47 *inclusive, of this act, and sections 2 to 12, inclusive, of this act* may take
48 reasonable steps to prove that the repairs were made and to have them
49 inspected.



2. The provisions of NRS 40.600 to 40.695, inclusive, *and sections 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of this act* regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

Sec. 32. NRS 40.680 is hereby amended to read as follows:

40.680 1. Except as otherwise provided in this chapter, before an action based on a claim governed by NRS 40.600 to 40.695, inclusive, *and sections 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of this act* may be commenced in court, the matter must be submitted to ~~mediation, unless mediation is waived in writing by the contractor and the claimant.~~

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

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

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

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

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

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

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

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

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

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



* S B 5 1 6 *

1 ~~— (f) Refer to the judge who appointed him or to the presiding judge of the~~
2 ~~court in which the action is commenced any matter requiring assistance~~
3 ~~from the court.~~
4 ~~The special master shall not, unless otherwise agreed by the parties,~~
5 ~~personally conduct any settlement conferences or engage in any ex parte~~
6 ~~meetings regarding the action.~~
7 ~~— 5. Upon application by a party to the court in which the action is~~
8 ~~commenced, any decision or other action taken by a special master~~
9 ~~appointed pursuant to this section may be appealed to the court for a~~
10 ~~decision.~~
11 ~~— 6. A report issued by a mediator or special master that indicates that~~
12 ~~either party has failed to appear before him or to mediate in good faith is~~
13 ~~admissible in the action, but a statement or admission made by either party~~
14 ~~in the course of mediation is not admissible.] the state contractors' board~~
15 ~~for review pursuant to sections 2 to 12, inclusive, of this act within 30~~
16 ~~days after the expiration of the time for the:~~
17 *(a) Contractor to provide a written response to the claimant's written*
18 *notice of defects pursuant to NRS 40.645 or 40.682, which response may*
19 *include, without limitation, an agreement of a subcontractor to repair or*
20 *to contribute to a proposal for monetary compensation pursuant to NRS*
21 *40.645 or 40.682;*
22 *(b) Claimant to accept an offer made as part of a written response by*
23 *the contractor or subcontractor to the claimant's written notice of defects*
24 *pursuant to NRS 40.645 or 40.682, if such an offer is made; or*
25 *(c) Contractor or subcontractor to complete repairs made as part of a*
26 *written response by the contractor to the claimant's written notice of*
27 *defects pursuant to NRS 40.645 or 40.682 that is accepted by the*
28 *claimant, including, without limitation, any extension of the period for*
29 *completing repairs which has been agreed to in writing by the claimant*
30 *and contractor,*
31 *whichever is later.*
32 *2. Any action involving a constructional defect that is filed without*
33 *satisfying the requirements of NRS 40.600 to 40.695, inclusive, and*
34 *sections 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of*
35 *this act must be dismissed without prejudice for failure to comply with*
36 *this section.*
37 *3. After the state contractors' board has issued an advisory opinion*
38 *concerning a claim of a constructional defect pursuant to the provisions*
39 *of section 7 of this act, a claimant may proceed to file an action based on*
40 *a claim governed by NRS 40.600 to 40.695, inclusive, and sections 19 to*
41 *23, inclusive, of this act, and sections 2 to 12, inclusive, of this act.*
42 *4. A contractor who is served with a summons and complaint by a*
43 *claimant for a claim governed by the provisions of NRS 40.600 to 40.695,*
44 *inclusive, and sections 19 to 23, inclusive, of this act, and sections 2 to*
45 *12, inclusive, of this act and who files a third party complaint against a*
46 *subcontractor or design professional shall, not later than 60 days after*
47 *the date of service of the answer to the complaint, add any additional*
48 *parties to the third party complaint or file any third party complaint*
49 *against a subcontractor, design professional or additional party who may*



* S B 5 1 6 *

1 *be responsible for all or a portion of the constructional defects set forth*
2 *in the notice served pursuant to NRS 40.645 or 40.682, as applicable,*
3 *unless, upon a showing of diligent effort and good cause, the court*
4 *allows a later addition of such parties.*

5 *5. The provisions of this section do not prohibit the parties to a claim*
6 *involving a constructional defect governed by NRS 40.600 to 40.695,*
7 *inclusive, and sections 19 to 23, inclusive, of this act, and sections 2 to*
8 *12, inclusive, of this act from voluntarily agreeing in writing to submit a*
9 *matter to mediation.*

10 **Sec. 33.** NRS 40.682 is hereby amended to read as follows:

11 40.682 Except as otherwise provided in this section and NRS 40.670:

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

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

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

18 *For a claim that is a complex matter, before a claimant submits a claim*
19 *of a constructional defect to the state contractors' board for review*
20 *pursuant to sections 2 to 12, inclusive, of this act and before a claimant*
21 *commences an action against a contractor for damages arising from a*
22 *constructional defect, the claimant must give a written notice by certified*
23 *mail, return receipt requested, to the contractor, at the contractor's last*
24 *known address, specifying in reasonable detail, to the extent known, the*
25 *defects and any damages or injuries to each residence or appurtenance that*
26 *is the subject of the claim. The notice must describe in reasonable detail*
27 *each defect, the specific location of each defect, and the nature and extent*
28 *that is known of the damage or injury resulting from each defect. If an*
29 *expert opinion has been rendered concerning the existence or extent of the*
30 *defects, a written copy of the opinion must accompany the notice. An*
31 *expert opinion that specifies each defect to the extent known, the specific*
32 *location of each defect to the extent known, and the nature and extent that*
33 *is known of the damage or injury resulting from each defect, based on a*
34 *valid and reliable representative sample of the residences and*
35 *appurtenances involved in the action, satisfies the requirements of this*
36 *section.*

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

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

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

47 ~~—(b) The inspection of]~~ *Within 10 days after the contractor receives the*
48 *notice, the contractor shall provide a copy of the notice of defects to each*
49 *subcontractor and each design professional who the contractor*



* S B 5 1 6 *

1 *reasonably believes performed the original construction or design work*
2 *which is alleged to be a constructional defect.*

3 *3. During the 60 days after the contractor receives the notice, on his*
4 *written request, the contractor may:*

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

8 ~~[(e) The conduct of]~~

9 *(b) Conduct* any tests that are reasonably necessary to determine the
10 nature and cause of a defect or any damage or injury, and the nature and
11 extent of repairs necessary to remedy a defect or any damage or injury. The
12 party conducting the test shall provide reasonable notice of the test to all
13 other parties and conduct the test at a reasonable time.

14 ~~4. [At the meeting held pursuant to subsection 3, the claimant and~~
15 ~~contractor shall:~~

16 ~~—(a) Establish a schedule for the addition of any additional parties to the~~
17 ~~complaint or to file any third party complaint against an additional party~~
18 ~~who may be responsible for all or a portion of the defects set forth in the~~
19 ~~notice served pursuant to subsection 1;~~

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

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

25 ~~—5. Each party added to the complaint or against whom a third party~~
26 ~~complaint is filed pursuant to subsection 4 shall file and serve an answer as~~
27 ~~required by law.~~

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

34 ~~—7. If a special master has not been appointed, the contractor, claimant~~
35 ~~or a party added to the complaint or against whom a third party complaint~~
36 ~~is filed may petition the court for the appointment of a special master at~~
37 ~~any time after the meeting held pursuant to subsection 3. The special~~
38 ~~master may:~~

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

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

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

45 ~~—8. Unless the mediation required pursuant to paragraph (b) of~~
46 ~~subsection 4 is completed or the contractor and claimant have agreed in~~
47 ~~writing not to mediate the claim pursuant to paragraph (b) of subsection 4,~~
48 ~~a party shall not propound interrogatories or requests for admission, take a~~
49 ~~deposition or file a motion that is dispositive of the action except:~~



* S B 5 1 6 *

1 ~~—(a) Upon agreement of the parties; or~~
2 ~~—(b) With the prior approval of the court or special master.~~
3 ~~—9. During the 60 days after the contractor receives the notice from~~
4 ~~the claimant, the contractor shall:~~

5 (a) Before conducting any inspection or test of the residence or
6 appurtenance, provide notice of the inspection or test in writing by
7 certified mail to each subcontractor and design professional to whom
8 notice was provided pursuant to subsection 2 at his last known address;
9 and

10 (b) Allow each subcontractor and design professional to whom notice
11 was provided pursuant to subsection 2 to jointly and severally conduct
12 any testing of the residence or appurtenance at the time the contractor is
13 allowed to conduct such testing.

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

18 ~~{10. Unless the parties agree otherwise, not less than 60 days before~~
19 ~~the date of the mediation pursuant to paragraph (b) of subsection 4 is~~
20 ~~convened.}~~

21 6. Within 90 days after the contractor receives the notice, the
22 contractor shall make a written response to the claimant that meets the
23 requirements set forth in subsection ~~{3}~~ 5 of NRS 40.645.

24 ~~{11}~~ 7. If the claimant is a representative of a homeowner's
25 association, the association shall submit any response made by the
26 contractor to each member of the association in writing not more than 30
27 days after the date the claimant receives the response.

28 ~~{12}~~ 8. The claimant shall respond to the written response of the
29 contractor within 45 days after the response of the contractor is mailed to
30 the claimant.

31 9. If a claimant accepts an offer to repair made as a part of a written
32 response of a contractor or subcontractor pursuant to this section, the
33 contractor or subcontractor, as applicable, shall complete the repairs or
34 cause the repairs to be completed within 90 days after the contractor
35 receives written notice of acceptance of the response, unless completion
36 is delayed by the claimant or by other events beyond the control of the
37 contractor or subcontractor, or timely completion of the repairs is not
38 reasonably possible. The claimant and the contractor may agree in
39 writing to extend the periods prescribed by this section.

40 Sec. 34. NRS 40.688 is hereby amended to read as follows:

41 40.688 1. If a claimant attempts to sell a residence that is or has been
42 the subject of a claim governed by NRS 40.600 to 40.695, inclusive, *and*
43 *sections 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of*
44 *this act*, he shall disclose, in writing, to any prospective purchaser of the
45 residence, not less than 30 days before the close of escrow for the sale of
46 the residence or, if escrow is to close less than 30 days after the execution
47 of the sales agreement, then immediately upon the execution of the sales
48 agreement or, if a claim is initiated less than 30 days before the close of



* S B 5 1 6 *

1 escrow, within 24 hours after giving written notice to the contractor
2 pursuant to subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682:

3 (a) All notices given by the claimant to the contractor pursuant to NRS
4 40.600 to 40.695, inclusive, *and sections 19 to 23, inclusive, of this act,*
5 *and sections 2 to 12, inclusive, of this act* that are related to the residence;

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

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

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

13 2. Before taking any action on a claim pursuant to NRS 40.600 to
14 40.695, inclusive, *and sections 19 to 23, inclusive, of this act, and*
15 *sections 2 to 12, inclusive, of this act*, the attorney for a claimant shall
16 notify the claimant in writing of the provisions of this section.

17 **Sec. 35.** NRS 40.689 is hereby amended to read as follows:

18 40.689 1. Upon petition by a party:

19 (a) The court shall give preference in setting a date for the trial of an
20 action commenced pursuant to NRS 40.600 to 40.695, inclusive ~~†~~, *and*
21 *sections 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of*
22 *this act*; and

23 (b) The court may assign an action commenced pursuant to NRS 40.600
24 to 40.695, inclusive, *and sections 19 to 23, inclusive, of this act, and*
25 *sections 2 to 12, inclusive, of this act* to a senior judge.

26 2. If the action is assigned to a senior judge upon petition by a party:

27 (a) Any additional expenses caused by the assignment must be borne
28 equally by each party involved; or

29 (b) The judge may distribute any additional expenses among the parties
30 as he deems appropriate.

31 **Sec. 36.** NRS 40.690 is hereby amended to read as follows:

32 40.690 1. A claim governed by NRS 40.600 to 40.695, inclusive,
33 *and sections 19 to 23, inclusive, of this act, and sections 2 to 12,*
34 *inclusive, of this act* may not be brought by a claimant or contractor
35 against a government, governmental agency or political subdivision of a
36 government ~~†~~ during the period in which a claim for a constructional
37 defect is being settled ~~†-mediated†~~ or otherwise resolved pursuant to NRS
38 40.600 to 40.695, inclusive ~~†~~, *and sections 19 to 23, inclusive, of this*
39 *act, and sections 2 to 12, inclusive, of this act*. The settlement of such a
40 claim does not affect the rights or obligations of the claimant or contractor
41 in any action brought by the claimant or contractor against a third party.

42 2. A contractor or claimant may require a party against whom the
43 contractor or claimant asserts a claim governed by NRS 40.600 to 40.695,
44 inclusive, *and sections 19 to 23, inclusive, of this act, and sections 2 to*
45 *12, inclusive, of this act* to appear and participate in proceedings held
46 pursuant to those sections as if the party were a contractor and the party
47 requiring him to appear were a claimant. The party must receive notice of
48 the proceedings from the contractor or claimant.



1 **Sec. 37.** NRS 40.692 is hereby amended to read as follows:
2 40.692 If, after complying with the procedural requirements of NRS
3 ~~40.645 and 40.680, or NRS 40.682,~~ *40.600 to 40.695, inclusive, and*
4 *sections 19 to 23, inclusive, of this act, and sections 2 to 12, inclusive, of*
5 *this act,* a claimant proceeds with an action for damages arising from a
6 constructional defect:

7 1. The claimant and each contractor who is named in the original
8 complaint when the action is commenced are not required, while the action
9 is pending, to comply with the requirements of NRS ~~40.645 or 40.680, or~~
10 ~~NRS 40.682,~~ *40.600 to 40.695, inclusive, and sections 19 to 23, inclusive,*
11 *of this act, and sections 2 to 12, inclusive, of this act* for any
12 constructional defect that the claimant includes in an amended complaint,
13 if the constructional defect:

14 (a) Is attributable, in whole or in part, to such a contractor;
15 (b) Is located on the same property described in the original complaint;
16 and
17 (c) Was not discovered before the action was commenced provided that
18 a good faith effort had been undertaken by the claimant.

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

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

27 (b) The provisions of NRS 40.600 to 40.695, inclusive, *and sections 19*
28 *to 23, inclusive, of this act, and sections 2 to 12, inclusive, of this act*
29 apply to the person after that date.

30 **Sec. 38.** NRS 40.695 is hereby amended to read as follows:

31 40.695 1. Except as otherwise provided in subsection 2, statutes of
32 limitation or repose applicable to a claim based on a constructional defect
33 governed by NRS 40.600 to 40.695, inclusive, *and sections 19 to 23,*
34 *inclusive, of this act, and sections 2 to 12, inclusive, of this act* are tolled
35 from the time notice of the claim is given, until ~~30~~ :

36 (a) *Thirty* days after ~~mediation is concluded or waived in writing~~
37 ~~pursuant to NRS 40.680 or subsection 4 of NRS 40.682,~~ *an advisory*
38 *opinion is rendered by the state contractors' board pursuant to sections 2*
39 *to 12, inclusive, of this act; or*

40 (b) *If the state contractors' board issues an order requiring a*
41 *contractor to repair a constructional defect pursuant to section 9 of this*
42 *act, 45 days after the expiration of the time provided by the board for the*
43 *completion of repairs,*
44 *whichever is later.*

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

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

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



1 **Sec. 39.** NRS 113.135 is hereby amended to read as follows:
2 113.135 1. Upon signing a sales agreement with the initial purchaser
3 of residential property that was not occupied by the purchaser for more
4 than 120 days after substantial completion of the construction of the
5 residential property, the seller shall:

6 (a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206,
7 inclusive, and 40.600 to 40.695, inclusive ~~H~~ , and sections 19 to 23,
8 *inclusive, of this act, and sections 2 to 12, inclusive, of this act;*

9 (b) Notify the initial purchaser of any soil report prepared for the
10 residential property or for the subdivision in which the residential property
11 is located; and

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

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

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

22 **Sec. 40.** Chapter 116 of NRS is hereby amended by adding thereto a
23 new section to read as follows:

24 1. *A person shall not provide or offer to provide anything of value to*
25 *a property manager of an association or to a member or officer of an*
26 *executive board of an association to induce the property manager,*
27 *member or officer to encourage the association to file a claim for*
28 *damages arising from a constructional defect.*

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

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

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

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

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

44 5. *If a member or officer of an executive board violates the*
45 *provisions of this section, the executive board shall remove the officer or*
46 *member from the board.*

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



1 **7. As used in this section, “constructional defect” has the meaning**
2 **ascribed to it in NRS 40.615.**

3 **Sec. 41.** NRS 116.1203 is hereby amended to read as follows:

4 116.1203 1. Except as otherwise provided in subsection 2, if a
5 planned community contains no more than 12 units and is not subject to
6 any developmental rights, it is subject only to NRS 116.1105, 116.1106
7 and 116.1107 unless the declaration provides that this entire chapter is
8 applicable.

9 2. Except for NRS 116.3104, 116.31043, 116.31046 and 116.31138,
10 NRS 116.3101 to 116.3119, inclusive, **and section 40 of this act** and
11 116.110305 to 116.110393, inclusive, to the extent necessary in construing
12 any of those sections, apply to a residential planned community containing
13 more than six units.

14 **Sec. 42.** NRS 116.311 is hereby amended to read as follows:

15 116.311 1. If only one of several owners of a unit is present at a
16 meeting of the association, that owner is entitled to cast all the votes
17 allocated to that unit. If more than one of the owners are present, the votes
18 allocated to that unit may be cast only in accordance with the agreement of
19 a majority in interest of the owners, unless the declaration expressly
20 provides otherwise. There is majority agreement if any one of the owners
21 cast the votes allocated to that unit without protest made promptly to the
22 person presiding over the meeting by any of the other owners of the unit.

23 2. Except as otherwise provided in this section, votes allocated to a
24 unit may be cast pursuant to a proxy executed by a unit’s owner. A unit’s
25 owner may give a proxy only to a member of his immediate family, a
26 tenant of the unit’s owner who resides in the common-interest community
27 or another unit’s owner who resides in the common-interest community. If
28 a unit is owned by more than one person, each owner of the unit may vote
29 or register protest to the casting of votes by the other owners of the unit
30 through an executed proxy. A unit’s owner may revoke a proxy given
31 pursuant to this section only by actual notice of revocation to the person
32 presiding over a meeting of the association. A proxy is void if:

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

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

36 (c) The holder of the proxy does not disclose at the beginning of the
37 meeting for which the proxy is executed the number of proxies pursuant to
38 which he will be casting votes and the voting instructions received for each
39 proxy.

40 A proxy terminates immediately after the conclusion of the meeting for
41 which it was executed. A vote may not be cast pursuant to a proxy for the
42 election of a member of the executive board of an association **or for the**
43 **ratification of an action pursuant to paragraph (e) of subsection 9 of**
44 **NRS 116.3115.**

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

47 4. If the declaration requires that votes on specified matters affecting
48 the common-interest community be cast by lessees rather than units’
49 owners of leased units:



- 1 (a) The provisions of subsections 1 and 2 apply to lessees as if they
2 were units' owners;
- 3 (b) Units' owners who have leased their units to other persons may not
4 cast votes on those specified matters; and
- 5 (c) Lessees are entitled to notice of meetings, access to records, and
6 other rights respecting those matters as if they were units' owners.
- 7 Units' owners must also be given notice, in the manner provided in NRS
8 116.3108, of all meetings at which lessees are entitled to vote.
- 9 5. No votes allocated to a unit owned by the association may be cast.
- 10 6. Votes cast for the election of a member of the executive board of an
11 association must be counted in public.
- 12 **Sec. 43.** NRS 116.31139 is hereby amended to read as follows:
- 13 116.31139 1. An association may employ a person engaged in
14 property management for the common-interest community.
- 15 2. Except as otherwise provided in this section, a person engaged in
16 property management for a common-interest community must:
- 17 (a) Hold a permit to engage in property management that is issued
18 pursuant to the provisions of chapter 645 of NRS; or
- 19 (b) Hold a certificate issued by the real estate commission pursuant to
20 subsection 3.
- 21 3. The real estate commission shall provide by regulation for the
22 issuance of certificates for the management of common-interest
23 communities to persons who are not otherwise authorized to engage in
24 property management pursuant to the provisions of chapter 645 of NRS.
25 The regulations:
- 26 (a) Must establish the qualifications for the issuance of such a
27 certificate, including the education and experience required to obtain such
28 a certificate;
- 29 (b) May require applicants to pass an examination in order to obtain a
30 certificate;
- 31 (c) Must establish standards of practice for persons engaged in property
32 management for a common-interest community;
- 33 (d) Must establish the grounds for initiating disciplinary action against a
34 person to whom a certificate has been issued, including, without limitation,
35 the grounds for placing conditions, limitations or restrictions on a
36 certificate and for the suspension or revocation of a certificate; and
- 37 (e) Must establish rules of practice and procedure for conducting
38 disciplinary hearings.
- 39 The real estate division of the department of business and industry may
40 investigate the property managers to whom certificates have been issued to
41 ensure their compliance with *section 40 of this act and* the standards of
42 practice adopted pursuant to this subsection and collect a fee for the
43 issuance of a certificate by the commission in an amount not to exceed the
44 administrative costs of issuing the certificate.
- 45 4. The provisions of subsection 2 do not apply to:
- 46 (a) A person who is engaged in property management for a common-
47 interest community on October 1, 1999, and is granted an exemption from
48 the requirements of subsection 2 by the administrator upon demonstration



* S B 5 1 6 *

1 that he is qualified and competent to engage in property management for a
2 common-interest community.

- 3 (b) A financial institution.
- 4 (c) An attorney licensed to practice in this state.
- 5 (d) A trustee.
- 6 (e) An employee of a corporation who manages only the property of the
7 corporation.
- 8 (f) A declarant.
- 9 (g) A receiver.

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

14 **Sec. 44.** NRS 116.3115 is hereby amended to read as follows:

15 116.3115 1. Until the association makes an assessment for common
16 expenses, the declarant shall pay all common expenses. After an
17 assessment has been made by the association, assessments must be made at
18 least annually, based on a budget adopted at least annually by the
19 association in accordance with the requirements set forth in NRS
20 116.31151. Except for an association for a time-share project governed by
21 the provisions of chapter 119A of NRS, and unless the declaration imposes
22 more stringent standards, the budget must include a budget for the daily
23 operation of the association and the money for the reserve required by
24 paragraph (b) of subsection 2.

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

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

29 (b) The association shall establish an adequate reserve, funded on a
30 reasonable basis, for the repair, replacement and restoration of the major
31 components of the common elements. The reserve may be used only for
32 those purposes, including, without limitation, repairing, replacing and
33 restoring roofs, roads and sidewalks, and must not be used for daily
34 maintenance.

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

38 4. To the extent required by the declaration:

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

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

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

47 5. Assessments to pay a judgment against the association may be made
48 only against the units in the common-interest community at the time the



* S B 5 1 6 *

1 judgment was entered, in proportion to their liabilities for common
2 expenses.

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

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

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

11 9. The association shall provide written notice *by certified mail, return*
12 *receipt requested*, to the owner of each unit of a meeting at which an
13 assessment for a capital improvement or the commencement of a civil
14 action is to be considered or action is to be taken on such an assessment at
15 least 21 calendar days before the meeting. Except as otherwise provided in
16 this subsection, the association may commence a civil action only upon a
17 vote ~~for written agreement~~ of the owners of units to which at least a
18 majority of the votes of the members of the association are allocated ~~+~~,
19 *taken at a scheduled meeting*. The provisions of this subsection do not
20 apply to a civil action that is commenced:

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

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

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

25 (d) To proceed with a counterclaim; or

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

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

31 *upon* a vote ~~for written agreement~~ of the owners of the units to which at
32 least a majority of votes of the members of the association are allocated. If
33 the ~~association, after making a good faith effort, cannot obtain the~~
34 ~~required vote or agreement to commence or ratify such a civil action,~~

35 *action is not so ratified*, the association ~~may thereafter seek~~ *shall file a*
36 *special motion* to dismiss the action and *the court shall dismiss the action*
37 without prejudice for ~~that reason only if a vote or written agreement of the~~

38 ~~owners of the units to which at least a majority of votes of the members of~~
39 ~~the association are allocated was obtained at the time the approval to~~
40 ~~commence or ratify the action was sought.~~ *failure to comply with this*
41 *paragraph.*

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

46 (a) A reasonable estimate of the costs of the civil action, including ,
47 *without limitation*, reasonable attorney's fees ~~+~~ *and fees for experts and*
48 *other witnesses;*



* S B 5 1 6 *

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

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

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

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

15 **Sec. 45.** NRS 119A.165 is hereby amended to read as follows:

16 119A.165 1. If a matter governed by this chapter is also governed by
17 chapter 116 of NRS, compliance with the provisions of chapter 116 of
18 NRS governing the matter which are in addition to or different from the
19 provisions in this chapter governing the same matter is not required. In the
20 event of a conflict between provisions of this chapter and chapter 116 of
21 NRS, the provisions of this chapter prevail.

22 2. Without limiting the generality of subsection 1, the provisions of
23 NRS 116.11145, 116.12065, 116.3103, 116.31031, 116.31034, 116.3106,
24 116.31065, 116.3108 to 116.311, inclusive, 116.31139, 116.31145 to
25 116.31158, inclusive, 116.31162, 116.31175, 116.31177, 116.41095 and
26 116.4117 *and section 40 of this act* do not apply to a time share or a time-
27 share project.

28 **Sec. 46.** The amendatory provisions of this act do not apply to a claim
29 initiated or an action commenced pursuant to NRS 40.600 to 40.695,
30 inclusive, before October 1, 2001.

31 **Sec. 47.** The amendatory provisions of section 40 of this act do not
32 apply to offenses committed before October 1, 2001.

