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AB449 PROTECTION FOR NEVADA CONSUMERS

1.

Synopsis.

AB449 provides protection for Nevada home buyers in several ways. The bill mandates developer disclosures to home buyers of information essential to enable a home buyer to make a reasoned decision about making the biggest purchase he or she will make.

AB449 simplifies the current byzantine rules for determining how much time a homeowner has to bring a claim against the developer. AB449 clarifies that a contractor cannot avoid disciplinary proceedings before the Contractor's Board simply because a homeowner has filed a Chapter 40 claim against the contractor. The bill puts some teeth into the existing requirement that a builder must promptly correct a life safety defect. AB449 would prevent construction defects from occurring by imposing stricter standards for engineering certifications of various aspects of the design and construction of homes. AB446 also seeks to prevent construction defects from occurring by enhancing standards for obtaining a contractor's license and also requiring continuing education of contractors.

II.

AB449 would ensure that homeowners obtain meaningful information from developers.

For the vast majority of Nevada families, buying a home is by far the largest

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ASSEMBLY JUDICIARY

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SUBMITTED BY: SCOTT CANEPA

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investment the family makes. All too often the excitement of the new home purchase turns into stress and anxiety when the home starts to crack, crumble, leak, become unsafe or unhealthy. Protection against such misfortune begins with knowledge. AB449 would require builders to tell home buyers about other construction defect cases against the builder and about disciplinary matters against the builder before the Contractor's Board. AB449 would also require that the developer advise the home buyer as to the extent of insurance coverage carried by the builder. In addition, the builder would be required to provide a list of all persons or entities who participated in any manner in the development, construction or sale of the residence. Finally, the builder would be required to provide the buyer with a statement describing any deviation from any applicable building code in the development or construction of the residence.

III.

AB449 would simply the existing complex rules for determining how much time a homeowner has to bring a claim.

When problems first occur with the home, homeowners routinely contact builders to correct the problems. Eventually, homeowners come to the realization that the builder's attempts to repair do not work. The problem keeps coming back or the problem seems to be worse than what the builder's customer service representatives have told the homeowner. Coming to the realization that litigation may be necessary homeowners ask, "How much time do I have to file suit?" The answer is very complex. There are a set of time limits that start from completion of construction. These time limits vary depending upon how apparent is the defect and upon whether or not the defect



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was something that was known to the builder at the time of construction. There are also rules for extending these time periods under certain circumstances. A second set of time limits, determined by the Nevada Supreme Court to also apply to construction defect cases, run from when the homeowner knew or should have known of the existence of the defect. AB449 seeks to simplify the rules and have one set of time limits that run from completion of construction so that homeowners can have a clearer understanding of how much time they have to file a lawsuit.

IV.

Contractor's Board disciplinary proceedings should not be impacted by Chapter 40 claims.

Often a homeowner will file a claim with the Contractor's Board for help in getting a construction defect corrected. Some homeowners also become part of a construction defect lawsuit. Builders insist that once a lawsuit is filed involving a construction defect claim, the Contractor's Board loses jurisdiction to pursue a disciplinary matter against the contractor. AB449 at Sections 9 and 22 would clarify that the disciplinary proceeding can proceed simultaneously with the construction defect lawsuit.

V.

Homeowners should be entitled to compensation for reduction in market value due to mandated disclosures.

NRS 40.688 requires a homeowner who brings a construction defect claim under Chapter 40 to provide a prospective purchaser copies of all reports from experts and a



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detailed report of all repairs made. This provision was enacted in 1999 at the insistence of the builders. Builders regularly tell homeowners that if the homeowner gets involved in a construction defect claim there will be a reduction in market value of the home because of the disclosure requirements. Any such reduction in market value is not the fault of the home buyer who innocently purchased the residence assuming it was free of defects. Responsibility for any reduction in market value that occurs should lie with the person or entity responsible for creating the defect that resulted in the reduction in market value. AB449 Section 10 would accomplish this objective.

VI.

AB449 will help assure that life safety defects get corrected promptly.

At Section 10, AB449 provides for penalties against a contractor who refuses to correct the life-safety defect in a timely manner. This provision requires the aggrieved homeowner to secure the opinion of an engineer or architect that the defect, in fact, creates an imminent threat to the health or safety of the inhabitants and subjects the contractor to treble damages if a judge or jury determines that the contractor refused to correct the defect in a timely manner. The section also would require revocation of a contractor's license.

VII.

AB449 would help to prevent construction defects from happening.

From a public policy perspective, one must ask, why do these construction defects keep happening? One hears little about construction defects in commercial buildings, but such defects seem to occur all too frequently in the construction of homes. AB449



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proposes to impose greater quality control requirements on construction of residences. Sections 13, 14 and 15 would require engineering certifications as to plans and implementation for the geotechnical evaluation of a property, the grading and drainage of the property as well as the structural design and construction. Each such aspect of the construction would have to be certified by an engineer licensed in the particular discipline. The engineer would be required to carry professional liability insurance of not less than \$1 million. The engineer would report to the local building department but the fees of the engineer would have to be paid by the developer. If such inspections and certifications were to take place, the most serious defects in home construction could be eliminated or at least substantially abated.

VIII.

AB449 would help to prevent construction defects by mandating increased educational requirements for builders.

Section 18 of AB449 would require a practical examination of applicants for a contractor's license. Currently, applicants simply must pass a written test in order to obtain a contractor's license. Section 18 would propose a competency requirement in actually performing the work of a contractor.

Section 19 would mandate continuing education for licensed contractors. Staying current on building code requirements and improved industry standards should help to avert mistakes.

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IX.

Conclusion

AB 449 should be enacted into law because it could help prevent the occurrence of some of the most serious construction defects. It mandates reasonable disclosures by builders. It simplifies rules regarding time limits for filing a lawsuit. It provides homeowner compensation for reduction in market value of the home due to required defect disclosure and would help assure that life-safety defects are promptly repaired.