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CONSTRUCTION DEFECTS
OVERVIEW OF ASSEMBLY BILL 133, SECOND REPRINT
(2001 SESSION OF THE NEVADA LEGISLATURE)

Following is an overview of the provisions of the Second Reprint of Assembly Bill 133 from the 2001 Legislative Session.

- **Notification of Defect to Contractor**—Before a homeowner may commence an action against a contractor for damages arising from a constructional defect:

Section 5(1) of
AB 133(R2)

- ◀ **Notice**—The homeowner must give written notice by certified mail to the contractor.
- ◀ **Specify Defects**—The complaint must specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim. The notice must describe in reasonable detail the cause of the defects if the cause is known, the nature and extent that is known of the damage or injury resulting from the defects, and the location of each defect within each residence or appurtenance to the extent known.

Section 9(1) of
AB 133 (R2)

- ◀ **Exception to notice requirement** – A homeowner is not required to provide the notice if:
 - The contractor has threatened or initiated legal proceedings against the claimant at any time;
 - The homeowner has been sued by a third party or the contractor in connection to the constructional defect and the homeowner is filing a third-party complaint or cross complaint;
 - The contractor has threatened to commit or has committed an act of violence or a criminal offense against the homeowner or the homeowner's property, or the homeowner has a reasonable belief the contractor intends to commit such an act.

- **Notice to Subcontractors from the Contractor**—The contractor must provide notice of the homeowner's complaint to the subcontractors as follows:

Section 5(2) of
AB 133 (R2)

- ◀ **Time Frame**—Within 15 days after receiving a notice from the homeowner, a contractor must forward a copy of the notice by certified mail, return receipt requested, to each subcontractor, supplier, and design professional who the contractor reasonably believes is responsible for a defect specified in the notice.
- ◀ **Information Provided**—The contractor must include with the copy of the notice the specific defect for which the contractor believes the subcontractor, supplier, or design professional is responsible.

*Prepared by the Research Division
Nevada Legislative Counsel Bureau*

ASSEMBLY JUDICIARY *H1-5*
DATE: *5/15/03* ROOM: *3138* EXHIBIT *H*
SUBMITTED BY: *Allison Combs*

Section 5(3) of
AB 133(R2)

- **Access to the Home**—The homeowner must, with reasonable notice, allow the contractor and a subcontractor, supplier, or design professional who received the notice to access the residence or appurtenance to determine the nature and extent of a defect and the nature and extent of repairs necessary to remedy the defect.

- **Subcontractor Notification to the Contractor Regarding Repairs**—Within 15 days after a subcontractor, supplier, or design professional receives a copy of a notice from the contractor, he shall provide the contractor with a statement indicating:

Section 5(4) of
AB 133(R2)

- ◀ **Intent to Repair**—Whether the subcontractor, supplier, or design professional will repair the defect for which the contractor believes the subcontractor, supplier, or design professional is responsible; and

- ◀ **Time Frame**—If the subcontractor, supplier, or design professional decides to repair the defect, an estimate of the length of time required for the repair and at least two proposed dates on and times at which the subcontractor, supplier, or design professional can begin making the repair.

Section 6(1) of
AB 133(R2)

- **Contractor's Ability to Make Repairs**—A contractor who receives notice of a constructional defect from the homeowner may make the repairs necessary to remedy the defects and repair any damage or injury to the residence or appurtenance described in the notice. The contractor may also arrange to have such repairs made by a subcontractor, supplier, or design professional to whom the contractor forwarded notice of the defect. The homeowner must allow the contractor and a subcontractor, supplier, or design professional who is responsible for making repairs a reasonable opportunity to make repairs.

- ◀ **Time Frame**—The contractor shall ensure that any such repairs are completed within a reasonable time, but in any event:

- o If the constructional defect is not part of a complex matter, not later than 45 days after receiving the notice; or
- o If the constructional defect is part of a complex matter, not later than 90 days after receiving the notice.

Exception—An exception is provided if the claimant and the contractor negotiate in good faith and agree in writing to extend reasonably the time for completing the repairs. In that case, the repairs must be completed not later than the time set forth in the agreement.

- ◄ **Making the Repairs**—In making repairs, the contractor or a subcontractor, supplier, or design professional who is responsible for making the repairs shall:

Section 6(2) of
AB 133(R2)

- o **Reasonable Times**—Make the repairs at reasonable times that are agreed to in advance by the homeowner;
- o **Licensed Contractors/Subcontractors**—Ensure that all of the work to make the repairs is completed by contractors and subcontractors who are properly licensed, bonded and insured;
- o **Avoidance of Liens**—Take any action necessary to prevent a mechanic's lien from being obtained on the homeowner's property on which the repairs are being made, to remove such a mechanic's lien if one is obtained, and to indemnify the homeowner against any expenses incurred concerning such a mechanic's lien; and
- o **Reports to Homeowners**—Provide to the homeowner a written report of each repair made, the method used to make the repair, and the parts replaced in making such repairs within 10 days after the repairs are made.

Section 6(3) of
AB 133(R2)

- **Option to File Action in Court Upon Failure to Repair to Satisfaction of Homeowner**—If the homeowner is not satisfied with the repairs made or the contractor does not make the repairs or have the repairs made within the required time frame or within the time agreed to in writing by the homeowner and the contractor, the homeowner may commence an action in court against the contractor.

Section 7(1) of
AB 133(R2)

- **Limitations on Subcontractors Named in Action**—A contractor who does not provide a subcontractor, supplier, or design professional with notice of a constructional defect (received from the homeowner under these provisions) who the contractor reasonably believes is responsible for a defect specified in the notice may **not** recover attorney's fees, costs, fees for expert witnesses or fees for consultants from the subcontractor, supplier, or design professional that are incurred by the contractor in defending an action against the contractor for the constructional defect.

Section 7(2) of
AB 133(R2)

- **Opportunity for Subcontractor to Repair After Suit is Commenced**—After a homeowner files a claim against a contractor, a subcontractor, supplier, or design professional who is responsible for a constructional defect involved in the claim **and** who did **not** receive notice of the defect from the contractor may present directly to the homeowner an offer to repair the defect.

If the homeowner accepts the offer, the subcontractor, supplier, or design professional repairs the defect to the satisfaction of the claimant and the claimant provides a statement in writing to the subcontractor, supplier, or design professional indicating that the defect was repaired to his satisfaction, the contractor against whom the claim was filed may not

pursue any claim related to the defect that was repaired against the subcontractor, supplier, or design professional who repaired the defect.

- **Class Actions**—Nothing in these provisions affects the ability of claimants to maintain a class action for constructional defects against a contractor.

Section 9 (2) of
AB 133(R2)

- **Remedies Through the State Contractors' Board**—Nothing in these provisions affects the ability of a claimant, contractor, subcontractor, supplier, or design professional to pursue any remedy available through the State Contractors' Board pursuant to Chapter 624 of NRS.

Section 9 (3) of
AB 133(R2)

- **Notice to Insurer** – A contractor, subcontractor, supplier or design professional who receives notice of a constructional defect from the homeowner may present the notice to his insurer. The notice to the insurer constitutes the making of a claim under the policy, and requires the contractor, subcontractor, supplier or design professional and the insurer to perform any obligations or duties required by the policy upon the making of a claim.

Section 8 of
AB 133 (R2)

- **Information Given to Initial Purchaser of a Residence** – Each contractor who develops, constructs or landscapes a new residence must provide, in writing, to the initial purchaser the following information of each subcontractor who performed any work related to the residence: name, license number, business address and telephone number. A brief description of the work must also be provided. The information must be provided within 30 days after the close of escrow of the initial purchase.

Section 20 of
AB 133(R2)

- **Filing of an Affidavit in Certain Actions** – Require the filing of an affidavit by the attorney in an action pursuant to the provisions of the bill for the professional negligence of a design professional or a person primarily engaged in the practice professional engineering, land surveying, architecture or landscape architecture. The affidavit must state that the attorney has reviewed the facts of the case and has consulted with a knowledgeable expert, and has concluded on the basis of his review and consultation with the expert that the action has a reasonable basis in law and fact. The court must dismiss the action if the attorney fails to file the affidavit.

Sections 10 & 11
of AB 133(R2)

- **Unit-owner Associations and Filing Claims from Construction Defects** - Prohibit a person from providing anything of a monetary value to a property manager or a member or officer of an executive board to induce the person to encourage or discourage the association to file a claim for damages arising from a constructional defect. Similarly, prohibit the property manager or member or officer of an association from accepting anything of monetary value for this reason.

Section 21 of AB
133(R2)

ADDITIONAL PROPOSAL

(Not included in Assembly Bill 133, Second Reprint)

- **Damages the Court may Award to Homeowner**—If the court finds in favor of the homeowner, the court may award three types of damages:
 - ◄ *Amount necessary to repair the defect*—The court may identify and award the necessary damages to repair the defect. Such damages may only be used for the purpose of repairing the defect. Any amount not used by the homeowner for the repair must revert back to the contractor. If the homeowner has already repaired the defect, the court may award damages to reimburse the homeowner for the amounts expended.
 - ◄ *Attorneys' fees and court costs.*
 - ◄ *Amount to cover other expenses of the homeowner relating to the defect and/or pain and suffering of the homeowner.* Examples of "other expenses" include the cost for other accommodations if the homeowner is forced to move out due to the defect.