
ASSEMBLY BILL NO. 446—COMMITTEE ON JUDICIARY

MARCH 20, 2003

Referred to Committee on Judiciary

SUMMARY—Revises certain provisions relating to constructional defects, dissolution of corporations and limited-liability companies and commencement of civil actions by unit-owners' associations. (BDR 3-869)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil actions; providing certain limitations on the ability of a contractor to seek indemnification from a subcontractor who was not responsible for a constructional defect; requiring a contractor who repairs a constructional defect to pay for an independent person to supervise and inspect the repair and to provide a payment bond and performance bond to the claimant under certain circumstances; providing that a contract or agreement that limits or alters the damages that may be recovered for a constructional defect is void; requiring a court to revoke the license of a contractor if the contractor fails to correct or repair a constructional defect under certain circumstances; providing that a release or covenant not to sue given to a tortfeasor discharges the tortfeasor from liability for express indemnity under certain circumstances; providing that the dissolution of a corporation or limited-liability company does not impair certain claims, remedies or causes of action relating to a constructional defect; prohibiting a seller or contractor from including in certain contracts or agreements for the purchase and sale of real property a provision requiring binding or nonbinding arbitration; revising the provisions governing the commencement of a civil action by a unit-



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owners' association; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 38.219 is hereby amended to read as follows:
2 38.219 1. ~~[An]~~ *Except as otherwise provided in sections 13*
3 *and 15 of this act, an* agreement contained in a record to submit to
4 arbitration any existing or subsequent controversy arising between
5 the parties to the agreement is valid, enforceable and irrevocable
6 except upon a ground that exists at law or in equity for the
7 revocation of a contract.
8 2. The court shall decide whether an agreement to arbitrate
9 exists or a controversy is subject to an agreement to arbitrate.
10 3. An arbitrator shall decide whether a condition precedent to
11 arbitrability has been fulfilled and whether a contract containing a
12 valid agreement to arbitrate is enforceable.
13 4. If a party to a judicial proceeding challenges the existence
14 of, or claims that a controversy is not subject to, an agreement to
15 arbitrate, the arbitral proceeding may continue pending final
16 resolution of the issue by the court, unless the court otherwise
17 orders.
18 **Sec. 2.** NRS 38.221 is hereby amended to read as follows:
19 38.221 1. On motion of a person showing an agreement to
20 arbitrate and alleging another person's refusal to arbitrate pursuant
21 to the agreement:
22 (a) If the refusing party does not appear or does not oppose the
23 motion, the court shall order the parties to arbitrate; and
24 (b) If the refusing party opposes the motion, the court shall
25 proceed summarily to decide the issue and order the parties to
26 arbitrate unless it finds that there is no enforceable agreement to
27 arbitrate.
28 2. On motion of a person alleging that an arbitral proceeding
29 has been initiated or threatened but that there is no agreement to
30 arbitrate ~~[or that an agreement to arbitrate is void pursuant~~
31 ~~to section 13 or 15 of this act,~~ the court shall proceed summarily to
32 decide the issue. If the court finds that there is an enforceable
33 agreement to arbitrate, it shall order the parties to arbitrate.
34 3. If the court finds that there is no enforceable agreement ~~[or~~
35 ~~or that an agreement to arbitrate is void pursuant to section 13 or~~
36 ~~15 of this act,~~ it may not, pursuant to subsection 1 or 2, order the
37 parties to arbitrate.



1 4. The court may not refuse to order arbitration because the
2 claim subject to arbitration lacks merit or grounds for the claim have
3 not been established.

4 5. If a proceeding involving a claim referable to arbitration
5 under an alleged agreement to arbitrate is pending in court, a
6 motion under this section must be made in that court. Otherwise, a
7 motion under this section may be made in any court as provided in
8 NRS 38.246.

9 6. If a party makes a motion to the court to order arbitration,
10 the court on just terms shall stay any judicial proceeding that
11 involves a claim alleged to be subject to the arbitration until the
12 court renders a final decision under this section.

13 7. If the court orders arbitration, the court on just terms shall
14 stay any judicial proceeding that involves a claim subject to the
15 arbitration. If a claim subject to the arbitration is severable, the court
16 may limit the stay to that claim.

17 **Sec. 3.** NRS 38.241 is hereby amended to read as follows:

18 38.241 1. Upon motion to the court by a party to an arbitral
19 proceeding, the court shall vacate an award made in the arbitral
20 proceeding if:

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

23 (b) There was:

24 (1) Evident partiality by an arbitrator appointed as a neutral
25 arbitrator;

26 (2) Corruption by an arbitrator; or

27 (3) Misconduct by an arbitrator prejudicing the rights of a
28 party to the arbitral proceeding;

29 (c) An arbitrator refused to postpone the hearing upon showing
30 of sufficient cause for postponement, refused to consider evidence
31 material to the controversy, or otherwise conducted the hearing
32 contrary to NRS 38.231, so as to prejudice substantially the rights of
33 a party to the arbitral proceeding;

34 (d) An arbitrator exceeded his powers;

35 (e) There was no agreement to arbitrate ~~or~~ *or the agreement to*
36 *arbitrate was void pursuant to section 13 or 15 of this act*, unless
37 the movant participated in the arbitral proceeding without raising the
38 objection under subsection 3 of NRS 38.231 not later than the
39 beginning of the arbitral hearing; or

40 (f) The arbitration was conducted without proper notice of the
41 initiation of an arbitration as required in NRS 38.223 so as to
42 prejudice substantially the rights of a party to the arbitral
43 proceeding.

44 2. A motion under this section must be made within 90 days
45 after the movant receives notice of the award pursuant to NRS



1 38.236 or within 90 days after he receives notice of a modified or
2 corrected award pursuant to NRS 38.237, unless he alleges that the
3 award was procured by corruption, fraud or other undue means, in
4 which case the motion must be made within 90 days after the
5 ground is known or by the exercise of reasonable care would have
6 been known by the movant.

7 3. If the court vacates an award on a ground other than that set
8 forth in paragraph (e) of subsection 1, it may order a rehearing. If
9 the award is vacated on a ground stated in paragraph (a) or (b) of
10 subsection 1, the rehearing must be before a new arbitrator. If the
11 award is vacated on a ground stated in paragraph (c), (d) or (f) of
12 subsection 1, the rehearing may be before the arbitrator who made
13 the award or his successor. The arbitrator must render the decision
14 in the rehearing within the same time as that provided in subsection
15 2 of NRS 38.236 for an award.

16 4. If the court denies a motion to vacate an award, it shall
17 confirm the award unless a motion to modify or correct the award is
18 pending.

19 **Sec. 4.** NRS 40.640 is hereby amended to read as follows:

20 40.640 **1.** In a claim to recover damages resulting from a
21 constructional defect, a contractor is liable for his acts or omissions
22 or the acts or omissions of his agents, employees or subcontractors
23 and is not liable for any damages caused by:

24 ~~(1)~~ **(a)** The acts or omissions of a person other than the
25 contractor or his agent, employee or subcontractor;

26 ~~(2)~~ **(b)** The failure of a person other than the contractor or his
27 agent, employee or subcontractor to take reasonable action to reduce
28 the damages or maintain the residence;

29 ~~(3)~~ **(c)** Normal wear, tear or deterioration;

30 ~~(4)~~ **(d)** Normal shrinkage, swelling, expansion or settlement; or

31 ~~(5)~~ **(e)** Any constructional defect disclosed to an owner before
32 his purchase of the residence, if the disclosure was provided in
33 language that is understandable and was written in underlined and
34 boldfaced type with capital letters.

35 **2.** *A contractor may not seek indemnification from a
36 subcontractor for a constructional defect which was caused
37 entirely by a person other than the subcontractor unless the
38 subcontractor concealed the constructional defect and the
39 contractor demonstrates that the subcontractor:*

40 *(a) Had actual knowledge of the constructional defect; and*

41 *(b) Failed to provide a notice of the constructional defect to*
42 *the contractor or any party seeking to enforce or otherwise avail*
43 *himself of the provisions of the contract.*

44 *Any provision of a contract which conflicts with the provisions of*
45 *this subsection is void.*



1 **Sec. 5.** NRS 40.645 is hereby amended to read as follows:
2 40.645 Except as otherwise provided in this section and NRS
3 40.670:

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

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

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

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

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

44 (c) May include:



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

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

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

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

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

18 (a) *Pay for an independent person to supervise and inspect the*
19 *repair. The independent person must be selected by the claimant*
20 *and must have the appropriate license and qualifications.*

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

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

36 ~~5.1~~ 6. If the claimant is a representative of a homeowner's
37 association, the association shall submit any response made by the
38 contractor to each member of the association.

39 ~~6.1~~ 7. As used in this section, "subcontractor" means a
40 contractor who performs work on behalf of another contractor in the
41 construction of a residence or appurtenance.

42 **Sec. 6.** NRS 40.655 is hereby amended to read as follows:

43 40.655 1. Except as otherwise provided in NRS 40.650,
44 *40.667 and 40.670*, in a claim governed by NRS 40.600 to 40.695,



1 inclusive, the claimant may recover only the following damages to
2 the extent proximately caused by a constructional defect:

3 (a) Any reasonable attorney's fees;

4 (b) The reasonable cost of any repairs already made that were
5 necessary and of any repairs yet to be made that are necessary to
6 cure any constructional defect that the contractor failed to cure and
7 the reasonable expenses of temporary housing reasonably necessary
8 during the repair;

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

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

13 (e) The reasonable value of any other property damaged by the
14 constructional defect;

15 (f) Any additional costs reasonably incurred by the claimant,
16 including, but not limited to, any costs and fees incurred for the
17 retention of experts to:

18 (1) Ascertain the nature and extent of the constructional
19 defects;

20 (2) Evaluate appropriate corrective measures to estimate the
21 value of loss of use; and

22 (3) Estimate the value of loss of use, the cost of temporary
23 housing and the reduction of market value of the residence; and

24 (g) Any interest provided by statute.

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

27 3. ~~HH~~ *Except as otherwise provided in NRS 11.202 and*
28 *chapter 116 of NRS, if* a contractor complies with the provisions of
29 NRS 40.600 to 40.695, inclusive, the claimant may not recover from
30 the contractor, as a result of the constructional defect, anything other
31 than that which is provided pursuant to NRS 40.600 to 40.695,
32 inclusive.

33 4. *No contract or agreement may limit or alter the damages*
34 *that may be recovered pursuant to this section. Any provision of a*
35 *contract or agreement that conflicts with the provisions of this*
36 *subsection is void.*

37 5. As used in this section, "structural failure" means physical
38 damage to the load-bearing portion of a residence or appurtenance
39 caused by a failure of the load-bearing portion of the residence or
40 appurtenance.

41 **Sec. 7.** NRS 40.667 is hereby amended to read as follows:

42 40.667 1. Except as otherwise provided in subsection 2, a
43 written waiver or settlement agreement executed by a claimant after
44 a contractor has corrected or otherwise repaired a constructional
45 defect does not bar a claim for the constructional defect if it is



1 determined that the contractor failed to correct or repair the defect
2 properly.

3 2. The provisions of subsection 1 do not apply to any written
4 waiver or settlement agreement described in subsection 1, unless:

5 (a) The claimant has obtained the opinion of an expert
6 concerning the constructional defect;

7 (b) The claimant has provided the contractor with a written
8 notice of the defect pursuant to NRS 40.645 or 40.682 and a copy of
9 the expert's opinion; and

10 (c) The claimant and the contractor have complied with the
11 requirements for inspection and repair as provided in NRS 40.600 to
12 40.695, inclusive.

13 3. If a claimant does not prevail in any action which is not
14 barred pursuant to this section, the court may:

15 (a) Deny the claimant's attorney's fees, fees for an expert
16 witness or costs; and

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

18 *4. If the court determines in an action which is not barred*
19 *pursuant to this section that a contractor failed to correct or repair*
20 *a constructional defect properly:*

21 *(a) The limitation on damages provided in NRS 40.655 does*
22 *not apply and the claimant may recover the damages specified in*
23 *NRS 40.655 in addition to any other damages to which he may be*
24 *entitled;*

25 *(b) The court shall revoke the license of the contractor and*
26 *notify the State Contractors' Board of the revocation; and*

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

31 **Sec. 8.** NRS 40.670 is hereby amended to read as follows:

32 40.670 1. A contractor who receives written notice of a
33 constructional defect resulting from work performed by the
34 contractor or his agent, employee or subcontractor which creates an
35 imminent threat to the health or safety of the inhabitants of the
36 residence shall take reasonable steps to cure the defect as soon as
37 practicable. The contractor shall not cure the defect by making any
38 repairs for which he is not licensed or by causing any repairs to be
39 made by a person who is not licensed to make those repairs. ~~HH~~

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



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

4. *If an architect or residential designer registered pursuant to chapter 623 of NRS, or a professional engineer licensed pursuant to chapter 625 of NRS, certifies that the defect creates an imminent threat to the health or safety of the inhabitants of the residence, and if the trier of fact determines that the contractor refused to correct the defect in a timely manner and was not acting in good faith:*

(a) *The limitation on damages provided in NRS 40.655 does not apply and the owner of the residence may recover the damages specified in NRS 40.655 in addition to any other damages to which he may be entitled;*

(b) *The trier of fact shall revoke the license of the contractor and notify the State Contractors' Board of the revocation; and*

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

Sec. 9. NRS 17.245 is hereby amended to read as follows:

17.245 1. When a release or a covenant not to sue or not to enforce **a** judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution and for **express and** equitable indemnity to any other tortfeasor.

2. As used in this section ~~[, "equitable"]~~ :

(a) **"Equitable** indemnity" means a right of indemnity that is created by the court. ~~[rather than]~~



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1 (b) *“Express indemnity” means a right of indemnity that is*
2 expressly provided for in a written *contract or other express*
3 agreement.

4 **Sec. 10.** NRS 78.585 is hereby amended to read as follows:
5 78.585 ~~{The}~~

6 1. *Except as otherwise provided in subsection 2, the*
7 dissolution of a corporation does not impair any *claim*, remedy or
8 cause of action available to or against it or its directors, officers or
9 shareholders arising before its dissolution and commenced within 2
10 years after the date of the dissolution. It continues as a body
11 corporate for the purpose of prosecuting and defending suits,
12 actions, proceedings and claims of any kind or character by or
13 against it and of enabling it gradually to settle and close its business,
14 to collect and discharge its obligations, to dispose of and convey its
15 property, and to distribute its assets, but not for the purpose of
16 continuing the business for which it was established.

17 2. *The dissolution of a corporation does not impair any claim,*
18 *remedy or cause of action available to or against it or its directors,*
19 *officers or shareholders arising pursuant to NRS 40.600 to 40.695,*
20 *inclusive, before or after its dissolution and commenced before the*
21 *expiration of a statute of limitation or repose applicable to the*
22 *claim, remedy or cause of action.*

23 3. *In addition to any other method of enforcement, a claim,*
24 *remedy or cause of action specified in subsection 2 that is brought*
25 *or maintained against the corporation or its directors, officers or*
26 *shareholders may be enforced to the extent of any undistributed*
27 *assets of the corporation, including, without limitation, any*
28 *money, payment, disbursement, recovery or other asset available*
29 *to the corporation or its directors, officers or shareholders under a*
30 *policy of insurance obtained or maintained by or for the*
31 *corporation before, during or after the dissolution.*

32 **Sec. 11.** NRS 78.615 is hereby amended to read as follows:
33 78.615 ~~{H}~~

34 1. *Except as otherwise provided in subsection 2, if* any
35 corporation organized under this chapter becomes dissolved by the
36 expiration of its charter or otherwise, before final judgment obtained
37 in any action pending or commenced in any court of record of this
38 state against the corporation, the action ~~{shall}~~ *must* not abate ~~{by~~
39 ~~reason thereof,}~~ *because of the dissolution of the corporation,* but
40 the dissolution of the corporation being suggested upon the record,
41 and the names of the trustees or receivers of the corporation being
42 entered upon the record, and notice thereof served upon the trustees
43 or receivers, or , if such service ~~{be}~~ *is* impracticable , upon the
44 counsel of record in such *a* case, the action ~~{shall}~~ *must* proceed to



1 final judgment against the trustees or receivers ~~by~~ in the name of
2 the corporation.

3 *2. A pending action or proceeding for a claim, remedy or*
4 *cause of action arising pursuant to NRS 40.600 to 40.695,*
5 *inclusive, against a corporation organized pursuant to this*
6 *chapter, whether commenced before or after the corporation*
7 *becomes dissolved, must not abate because of the dissolution of*
8 *the corporation, but must proceed against the trustees or receivers*
9 *in the name of the corporation.*

10 **Sec. 12.** NRS 86.505 is hereby amended to read as follows:

11 86.505 ~~The~~

12 *1. Except as otherwise provided in subsection 2, the*
13 *dissolution of a limited-liability company does not impair any*
14 *claim, remedy or cause of action available to or against it or its*
15 *managers or members arising before its dissolution and commenced*
16 *within 2 years after the date of the dissolution. A dissolved company*
17 *continues as a company for the purpose of prosecuting and*
18 *defending suits, actions, proceedings and claims of any kind or*
19 *nature by or against it and of enabling it gradually to settle and close*
20 *its business, to collect and discharge its obligations, to dispose of*
21 *and convey its property, and to distribute its assets, but not for the*
22 *purpose of continuing the business for which it was established.*

23 *2. The dissolution of a limited-liability company does not*
24 *impair any claim, remedy or cause of action available to or against*
25 *it or its managers or members arising pursuant to NRS 40.600 to*
26 *40.695, inclusive, before or after its dissolution and commenced*
27 *before the expiration of a statute of limitation or repose applicable*
28 *to the claim, remedy or cause of action.*

29 *3. In addition to any other method of enforcement, a claim,*
30 *remedy or cause of action specified in subsection 2 that is brought*
31 *or maintained against the limited-liability company or its*
32 *managers or members may be enforced to the extent of any*
33 *undistributed assets of the limited-liability company, including,*
34 *without limitation, any money, payment, disbursement, recovery or*
35 *other asset available to the limited-liability company or its*
36 *managers or members under a policy of insurance obtained or*
37 *maintained by or for the limited-liability company before, during*
38 *or after the dissolution.*

39 **Sec. 13.** Chapter 113 of NRS is hereby amended by adding
40 thereto a new section to read as follows:

41 *1. A seller shall not include in a contract for the purchase*
42 *and sale of real property in this state that is entered into on or*
43 *after October 1, 2003, a provision requiring binding or*
44 *nonbinding arbitration of a claim involving a constructional*
45 *defect which is governed by NRS 40.600 to 40.695, inclusive.*



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

3 3. The provisions of this section do not:

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

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

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

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

14 116.3115 1. Until the association makes an assessment for
15 common expenses, the declarant shall pay all common expenses.
16 After an assessment has been made by the association, assessments
17 must be made at least annually, based on a budget adopted at least
18 annually by the association in accordance with the requirements set
19 forth in NRS 116.31151. Unless the declaration imposes more
20 stringent standards, the budget must include a budget for the daily
21 operation of the association and the money for the reserve required
22 by paragraph (b) of subsection 2.

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

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

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

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

36 4. To the extent required by the declaration:

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

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



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

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

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

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

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

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

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

40 *11. The provisions of ~~{this}~~ subsection 10 do not apply to a*
41 *civil action that is commenced:*

42 (a) To enforce the payment of an assessment;

43 (b) To enforce the declaration, bylaws or rules of the
44 association;

45 (c) To proceed with a counterclaim; or



1 (d) To protect the health, safety and welfare of the members of
2 the association. ~~If a civil action is commenced pursuant to this~~
3 ~~paragraph without the required vote or agreement, the action must~~
4 ~~be ratified within 90 days after the commencement of the action by~~
5 ~~a vote or written agreement of the owners of the units to which at~~
6 ~~least a majority of votes of the members of the association are~~
7 ~~allocated. If the association, after making a good faith effort, cannot~~
8 ~~obtain the required vote or agreement to commence or ratify such a~~
9 ~~civil action, the association may thereafter seek to dismiss the action~~
10 ~~without prejudice for that reason only if a vote or written agreement~~
11 ~~of the owners of the units to which at least a majority of votes of the~~
12 ~~members of the association are allocated was obtained at the time~~
13 ~~the approval to commence or ratify the action was sought.~~

14 ~~—10.]~~ 12. At least 10 days before an association commences or
15 seeks to ratify the commencement of a civil action, the association
16 shall provide a written statement to all units' owners that includes:

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

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

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

25 ~~[11.]~~ 13. No person other than a unit's owner may request the
26 dismissal of a civil action commenced by the association on the
27 ground that the association failed to comply with any provision of
28 this section.

29 **Sec. 15.** Chapter 624 of NRS is hereby amended by adding
30 thereto a new section to read as follows:

31 *1. A contractor shall not include in any contract or*
32 *agreement for the purchase and sale of real property, or for the*
33 *repair, alteration of or addition to a new or existing residence, or*
34 *of an appurtenance that is entered into on or after October 1,*
35 *2003, a provision requiring binding or nonbinding arbitration of a*
36 *claim involving a constructional defect which is governed by NRS*
37 *40.600 to 40.695, inclusive.*

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

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

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



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

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

5 **Sec. 16.** NRS 624.300 is hereby amended to read as follows:

6 624.300 1. Except as otherwise provided in ~~subsection 3,~~
7 subsections 3 and 7, the Board may:

8 (a) Suspend or revoke licenses already issued;

9 (b) Refuse renewals of licenses;

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

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

13 (e) Order a licensee to repay to the account established pursuant
14 to NRS 624.470, any amount paid out of the account pursuant to
15 NRS 624.510 as a result of an act or omission of that licensee;

16 (f) Order the licensee to take action to correct a condition
17 resulting from an act which constitutes a cause for disciplinary
18 action, at the licensee's cost, that may consist of requiring the
19 licensee to:

20 (1) Perform the corrective work himself;

21 (2) Hire and pay another licensee to perform the corrective
22 work; or

23 (3) Pay to the owner of the construction project a specified
24 sum to correct the condition; or

25 (g) Reprimand or take other less severe disciplinary action,
26 including, without limitation, increasing the amount of the surety
27 bond or cash deposit of the licensee,
28 if the licensee commits any act which constitutes a cause for
29 disciplinary action.

30 2. If the Board suspends or revokes the license of a contractor
31 for failure to establish financial responsibility, the Board may, in
32 addition to any other conditions for reinstating or renewing the
33 license, require that each contract undertaken by the licensee for a
34 period to be designated by the Board, not to exceed 12 months, be
35 separately covered by a bond or bonds approved by the Board and
36 conditioned upon the performance of and the payment of labor and
37 materials required by the contract.

38 3. If a licensee violates the provisions of NRS 624.3014 or
39 subsection 3 of NRS 624.3015, the Board may impose an
40 administrative fine of not more than \$20,000.

41 4. If a licensee commits a fraudulent act which is a cause for
42 disciplinary action under NRS 624.3016, the correction of any
43 condition resulting from the act does not preclude the Board from
44 taking disciplinary action.



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1 5. If the Board finds that a licensee has engaged in repeated
2 acts that would be cause for disciplinary action, the correction of
3 any resulting conditions does not preclude the Board from taking
4 disciplinary action pursuant to this section.

5 6. The expiration of a license by operation of law or by order
6 or decision of the Board or a court, or the voluntary surrender of a
7 license by a licensee, does not deprive the Board of jurisdiction to
8 proceed with any investigation of, or action or disciplinary
9 proceeding against, the licensee or to render a decision suspending
10 or revoking the license.

11 7. *A licensee whose license is revoked by an order issued*
12 *pursuant to NRS 40.667 or 40.670 may apply for a reinstatement*
13 *of his license if the order is reversed on appeal.*

14 8. If discipline is imposed pursuant to this section, including
15 any discipline imposed pursuant to a stipulated settlement, the costs
16 of the proceeding, including investigative costs and attorney's fees,
17 may be recovered by the Board.

18 ~~8.~~ 9. All fines collected pursuant to this section must be
19 deposited with the State Treasurer for credit to the Construction
20 Education Account created pursuant to NRS 624.580.

21 **Sec. 17.** 1. The amendatory provisions of this act do not
22 apply to a claim initiated or an action or suit filed before October 1,
23 2003.

24 2. The amendatory provisions of this act apply to a contract or
25 agreement entered into on or after October 1, 2003.

