

CHAPTER.....

AN ACT relating to real property; requiring notice, a right to inspect and a right to repair to be provided to a contractor before an action for constructional defects may be commenced; establishing the State Contractors' Board as a resource to answer questions and assist in resolving disputes concerning matters which may affect or relate to constructional defects; making various other changes concerning constructional defects; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 40 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this act.

**Sec. 2.** *“Amend a complaint to add a cause of action for a constructional defect” means any act by which a claimant seeks to:*

*1. Add to the pleadings a defective component that is not otherwise included in the pleadings and for which a notice was not previously given; or*

*2. Amend the pleadings in such a manner that the practical effect is the addition of a constructional defect that is not otherwise included in the pleadings.*

*The term does not include amending a complaint to plead a different cause for a constructional defect which is included in the same action.*

**Sec. 3.** *“Design professional” means a person who holds a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.*

**Sec. 4.** *“Subcontractor” means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.*

**Sec. 5.** *“Supplier” means a person who provides materials, equipment or other supplies for the construction of a residence or appurtenance.*

**Sec. 6.** *1. Except as otherwise provided in subsection 2, not later than 60 days after a contractor receives a notice pursuant to subsection 4 of NRS 40.645 which alleges common constructional defects to residences or appurtenances within a single development and which complies with the requirements of subsection 4 of NRS 40.645 for giving such notice, the contractor may respond to the named owners of the residences or*

*appurtenances in the notice in the manner set forth in section 9 of this act.*

*2. The contractor may provide a disclosure of the notice of the alleged common constructional defects to each unnamed owner of a residence or appurtenance within the development to whom the notice may apply in the manner set forth in this section. The disclosure must be sent by certified mail, return receipt requested, to the home address of each such owner. The disclosure must be mailed not later than 60 days after the contractor receives the notice of the alleged common constructional defects, except that if the common constructional defects may pose an imminent threat to health and safety, the disclosure must be mailed as soon as reasonably practicable, but not later than 20 days after the contractor receives the notice.*

*3. The disclosure of a notice of alleged common constructional defects provided by a contractor to the unnamed owners to whom the notice may apply pursuant to subsection 2 must include, without limitation:*

*(a) A description of the alleged common constructional defects identified in the notice that may exist in the residence or appurtenance;*

*(b) A statement that notice alleging common constructional defects has been given to the contractor which may apply to the owner;*

*(c) A statement advising the owner that he has 30 days within which to request the contractor to inspect the residence or appurtenance to determine whether the residence or appurtenance has the alleged common constructional defects;*

*(d) A form which the owner may use to request such an inspection or a description of the manner in which the owner may request such an inspection;*

*(e) A statement advising the owner that if he fails to request an inspection pursuant to this section, no notice shall be deemed to have been given by him for the alleged common constructional defects; and*

*(f) A statement that if the owner chooses not to request an inspection of his residence or appurtenance, he is not precluded from sending a notice pursuant to NRS 40.645 individually or commencing an action or amending a complaint to add a cause of action for a constructional defect individually after complying with the requirements set forth in NRS 40.600 to 40.695, inclusive, and sections 2 to 15, inclusive, of this act.*

*4. If an unnamed owner requests an inspection of his residence or appurtenance in accordance with subsection 3, the contractor must provide the response required pursuant to section*

*9 of this act not later than 45 days after the date on which the contractor receives the request.*

*5. If a contractor who receives a notice pursuant to subsection 4 of NRS 40.645 does not provide a disclosure to unnamed owners as authorized pursuant to this section, the owners of the residences or appurtenances to whom the notice may apply may commence an action for the constructional defect without complying with any other provision set forth in NRS 40.600 to 40.695, inclusive, and sections 2 to 15, inclusive, of this act. This subsection does not establish or prohibit the right to maintain a class action.*

*6. If a contractor fails to provide a disclosure to an unnamed owner to whom the notice of common constructional defects was intended to apply:*

*(a) The contractor shall be deemed to have waived his right to inspect and repair any common constructional defect that was identified in the notice with respect to that owner; and*

*(b) The owner is not required to comply with the provisions set forth in NRS 40.645 or section 11 of this act before commencing an action or amending a complaint to add a cause of action based on that common constructional defect.*

*Sec. 7. 1. Except as otherwise provided in subsection 2, not later than 30 days after the date on which a contractor receives notice of a constructional defect pursuant to NRS 40.645, the contractor shall forward a copy of the notice by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice.*

*2. If a contractor does not provide notice as required pursuant to subsection 1, the contractor may not commence an action against the subcontractor, supplier or design professional related to the constructional defect unless the contractor demonstrates that, after making a good faith effort, he was unable to identify the subcontractor, supplier or design professional who he believes is responsible for the defect within the time provided pursuant to subsection 1.*

*3. Except as otherwise provided in subsection 4, not later than 30 days after receiving notice from the contractor pursuant to this section, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 1 of section 8 of this act and provide the contractor with a written statement indicating:*

*(a) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes*

*the subcontractor, supplier or design professional is responsible; and*

*(b) If the subcontractor, supplier or design professional elects 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 is able to begin making the repair.*

*4. If the notice of a constructional defect forwarded by the contractor was given pursuant to subsection 4 of NRS 40.645 and the contractor provides a disclosure of the notice of the alleged common constructional defects to the unnamed owners to whom the notice may apply pursuant to section 6 of this act:*

*(a) The contractor shall, in addition to the notice provided pursuant to subsection 1, upon receipt of a request for an inspection, forward a copy of the request to or notify each subcontractor, supplier or design professional who may be responsible for the alleged defect of the request not later than 5 working days after receiving such a request; and*

*(b) Not later than 20 days after receiving notice from the contractor of such a request, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 2 of section 8 of this act and provide the contractor with a written statement indicating:*

*(1) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and*

*(2) If the subcontractor, supplier or design professional elects 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 is able to begin making the repair.*

*5. If a subcontractor, supplier or design professional elects to repair the constructional defect, the contractor or claimant may hold the subcontractor liable for any repair which does not eliminate the defect.*

**Sec. 8. 1.** *Except as otherwise provided in subsection 2, after notice of a constructional defect is given to a contractor pursuant to NRS 40.645, the claimant shall, upon reasonable notice, allow the contractor and each subcontractor, supplier or design professional who may be responsible for the alleged defect reasonable access to the residence or appurtenance that is the subject of the notice to determine the nature and extent of a constructional defect and the nature and extent of repairs that may be necessary. To the extent possible, the persons entitled to*

*inspect shall coordinate and conduct the inspections in a manner which minimizes the inconvenience to the claimant.*

*2. If notice is given to the contractor pursuant to subsection 4 of NRS 40.645, the contractor and each subcontractor, supplier or design professional who may be responsible for the defect do not have the right to inspect the residence or appurtenance of an owner who is not named in the notice unless the owner requests the inspection in the manner set forth in section 6 of this act. If the owner does not request the inspection, the owner shall be deemed not to have provided notice pursuant to NRS 40.645.*

**Sec. 9.** *1. Except as otherwise provided in NRS 40.670 and 40.672 and section 6 of this act, a written response must be sent by certified mail, return receipt requested, to a claimant who gives notice of a constructional defect pursuant to NRS 40.645:*

*(a) By the contractor not later than 90 days after the contractor receives the notice; and*

*(b) If notice was sent to a subcontractor, supplier or design professional, by the subcontractor, supplier or design professional not later than 90 days after the date that the subcontractor, supplier or design professional receives the notice.*

*2. The written response sent pursuant to subsection 1 must respond to each constructional defect in the notice and:*

*(a) Must state whether the contractor, subcontractor, supplier or design professional has elected to repair the defect or cause the defect to be repaired. If an election to repair is included in the response and the repair will cause the claimant to move from his home during the repair, the election must also include monetary compensation in an amount reasonably necessary for temporary housing or for storage of household items, or for both, if necessary.*

*(b) May include a proposal for monetary compensation, which may include contribution from a subcontractor, supplier or design professional.*

*(c) May disclaim liability for the constructional defect and state the reasons for such a disclaimer.*

*3. If the claimant is a homeowners' association, the association shall send a copy of the response to each member of the association not later than 30 days after receiving the response.*

*4. If the contractor, subcontractor, supplier or design professional has elected not to repair the constructional defect, the claimant or contractor may bring a cause of action for the constructional defect or amend a complaint to add a cause of action for the constructional defect.*

*5. If the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the claimant must provide the contractor, subcontractor, supplier or*

*design professional with a reasonable opportunity to repair the constructional defect.*

**Sec. 10. 1.** *If the response provided pursuant to section 9 of this act includes an election to repair the constructional defect:*

*(a) The repairs may be performed by the contractor, subcontractor, supplier or design professional, if he is properly licensed, bonded and insured to perform the repairs and, if he is not, the repairs may be performed by another person who meets those qualifications.*

*(b) The repairs must be performed:*

*(1) On reasonable dates and at reasonable times agreed to in advance with the claimant;*

*(2) In compliance with any applicable building code and in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of repair; and*

*(3) In a manner which will not increase the cost of maintaining the residence or appurtenance than otherwise would have been required if the residence or appurtenance had been constructed without the constructional defect, unless the contractor and the claimant agree in writing that the contractor will compensate the claimant for the increased cost incurred as a result of the repair.*

*(c) Any part of the residence or appurtenance that is not defective but which must be removed to correct the constructional defect must be replaced.*

*(d) The contractor, subcontractor, supplier or design professional shall prevent, remove and indemnify the claimant against any mechanics' liens and materialmen's liens.*

**2.** *Unless the claimant and the contractor, subcontractor, supplier or design professional agree to extend the time for repairs, the repairs must be completed:*

*(a) If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are four or fewer owners named in the notice, for the named owners, not later than 105 days after the date on which the contractor received the notice.*

*(b) If the notice was sent pursuant to subsection 4 of NRS 40.645 and there are five or more owners named in the notice, for the named owners, not later than 150 days after the date on which the contractor received the notice.*

*(c) If the notice was sent pursuant to subsection 4 of NRS 40.645, not later than 105 days after the date on which the contractor provides a disclosure of the notice to the unnamed owners to whom the notice applies pursuant to section 6 of this act.*

*(d) If the notice was not sent pursuant to subsection 4 of NRS 40.645:*

*(1) Not later than 105 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice of a constructional defect was received from four or fewer owners; or*

*(2) Not later than 150 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice was received from five or more owners or from a representative of a homeowners' association.*

*3. If repairs reasonably cannot be completed within the time set forth in subsection 2, the claimant and the contractor, subcontractor, supplier or design professional shall agree to a reasonable time within which to complete the repair. If the claimant and contractor, subcontractor, supplier or design professional cannot agree on such a time, any of them may petition the court to establish a reasonable time for completing the repair.*

*4. Any election to repair made pursuant to section 9 of this act may not be made conditional upon a release of liability.*

*5. Not later than 30 days after the repairs are completed, the contractor, subcontractor, supplier or design professional who repaired or caused the repair of a constructional defect shall provide the claimant with a written statement describing the nature and extent of the repair, the method used to repair the constructional defect and the extent of any materials or parts that were replaced during the repair.*

**Sec. 11.** *1. Except as otherwise provided in section 6 of this act, after notice of a constructional defect is given pursuant to NRS 40.645, before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:*

*(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to section 8 of this act; and*

*(b) Allow the contractor, subcontractor, supplier or design professional a reasonable opportunity to repair the constructional defect or cause the defect to be repaired if an election to repair is made pursuant to section 9 of this act.*

*2. If a claimant commences an action without complying with subsection 1 or NRS 40.645, the court shall:*

*(a) Dismiss the action without prejudice and compel the claimant to comply with those provisions before filing another action; or*



*(b) If dismissal of the action would prevent the claimant from filing another action because the action would be procedurally barred by the statute of limitations or statute of repose, the court shall stay the proceeding pending compliance with those provisions by the claimant.*

**Sec. 12.** *1. A claimant and any contractor, subcontractor, supplier and design professional may submit a question or dispute to the State Contractors' Board concerning any matter which may affect or relate to a constructional defect, including, without limitation, questions concerning the need for repairs, the appropriate method for repairs, the sufficiency of any repairs that have been made and the respective rights and responsibilities of homeowners, claimants, contractors, subcontractors, suppliers and design professionals.*

*2. If a question or dispute is submitted to the State Contractors' Board pursuant to this section, the State Contractors' Board shall, pursuant to its regulations, rules and procedures, respond to the question or investigate the dispute and render a decision. Nothing in this section authorizes the State Contractors' Board to require the owner of a residence or appurtenance to participate in any administrative hearing which is held pursuant to this section.*

*3. Not later than 30 days after a question or dispute is submitted to the State Contractors' Board pursuant to subsection 1, the State Contractors' Board shall respond to the question or render its decision. The response or decision of the State Contractors' Board:*

*(a) Is not binding and is not subject to judicial review pursuant to the provisions of chapters 233B and 624 of NRS; and*

*(b) Is not admissible in any judicial or administrative proceeding brought pursuant to the provisions of this chapter.*

*4. The provisions of this chapter do not preclude a claimant or a contractor, subcontractor, supplier or design professional from pursuing any remedy otherwise available from the State Contractors' Board pursuant to the provisions of chapter 624 of NRS concerning a constructional defect.*

*5. If an action for a constructional defect has been commenced, the court shall not stay or delay any proceedings before the court pending an answer to a question or decision concerning a dispute submitted to the State Contractors' Board.*

*6. The State Contractors' Board shall adopt regulations necessary to carry out the provisions of this section and may charge and collect reasonable fees from licensees to cover the cost of carrying out its duties pursuant to this section.*

**Sec. 13.** *1. If a contractor, subcontractor, supplier or design professional receives written notice of a constructional*



*defect, the contractor, subcontractor, supplier or design professional may present the claim to an insurer which has issued a policy of insurance that covers all or any portion of the business of the contractor, subcontractor, supplier or design professional.*

*2. If the contractor, subcontractor, supplier or design professional presents the claim to the insurer pursuant to this section, the insurer:*

*(a) Must treat the claim as if a civil action has been brought against the contractor, subcontractor, supplier or design professional; and*

*(b) Must provide coverage to the extent available under the policy of insurance as if a civil action has been brought against the contractor, subcontractor, supplier or design professional.*

*3. A contractor, subcontractor, supplier or design professional is not required to present a claim to the insurer pursuant to this section, and the failure to present such a claim to the insurer does not relieve the insurer of any duty under the policy of insurance to the contractor, subcontractor, supplier or design professional.*

**Sec. 14.** *1. If a settlement conference is held concerning a claim for a constructional defect, the special master, if any, or the judge presiding over the claim may order a representative of an insurer of a party to attend the settlement conference. If a representative of an insurer is ordered to attend the settlement conference, the insurer shall ensure that the representative is authorized, on behalf of the insurer, to:*

*(a) Bind the insurer to any settlement agreement relating to the claim;*

*(b) Enter into any agreement relating to coverage that may be available under the party's policy of insurance which is required to carry out any settlement relating to the claim; and*

*(c) Commit for expenditure money or other assets available under the party's policy of insurance.*

*2. If a representative of an insurer who is ordered to attend a settlement conference pursuant to subsection 1 fails to attend the settlement conference or attends but is substantially unprepared to participate, or fails to participate in good faith, the special master or the judge may, on his own motion or that of a party, issue any order with regard thereto that is just under the circumstances.*

*3. In lieu of or in addition to any other sanction, the special master or the judge may require the insurer to pay any reasonable expenses or attorney's fees incurred by a party because of the failure of the insurer or its representative to comply with the provisions of this section or any order issued pursuant to this section, unless the special master or the judge finds that the*

*failure to comply was substantially justified or that any other circumstances make the award of such expenses or fees unjust.*

*4. Any insurer which conducts business in this state and which insures a party against liability for the claim shall be deemed to have consented to the jurisdiction of the special master or the judge for the purposes of this section.*

*5. The authority conferred upon the special master or the judge pursuant to this section is in addition to any other authority conferred upon the special master or the judge pursuant to any other statute or any court rule.*

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

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

40.600 As used in NRS 40.600 to 40.695, inclusive, *and sections 2 to 15, inclusive, of this act*, unless the context otherwise requires, the words and terms defined in NRS 40.605 to 40.630, inclusive, *and sections 2 to 5, inclusive, of this act* have the meanings ascribed to them in those sections.

**Sec. 17.** NRS 40.610 is hereby amended to read as follows:

40.610 "Claimant" means ~~[an]~~ :

*1. An owner of a residence or appurtenance ~~[or a]~~ ;*

*2. A representative of a homeowner's association that is responsible for a residence or appurtenance and is acting within the scope of his duties pursuant to chapter 116 or 117 of NRS ~~[ ]~~ ; or*

*3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of NRS 40.645.*

**Sec. 18.** NRS 40.615 is hereby amended to read as follows:

40.615 "Constructional defect" ~~[includes]~~ *means* a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance ~~[-The term includes]~~ *and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance:*

*1. Which is done in violation of law, including, without limitation, in violation of local codes or ordinances;*

*2. Which proximately causes physical damage to the residence, an appurtenance or the real property to which the*

residence or appurtenance is affixed ~~[that is proximately caused by a constructional defect.]~~;

3. *Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping; or*

4. *Which presents an unreasonable risk of injury to a person or property.*

**Sec. 19.** NRS 40.635 is hereby amended to read as follows:

40.635 NRS 40.600 to 40.695, inclusive ~~[.]~~, *and sections 2 to 15, inclusive, of this act:*

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

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

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

4. Do not create a new theory upon which liability may be based ~~[.]~~, *except as otherwise provided in those sections.*

**Sec. 20.** NRS 40.645 is hereby amended to read as follows:

40.645 **1.** Except as otherwise provided in this section and NRS 40.670 , ~~[.]~~

~~—1. For a claim that is not a complex matter, at least 60 days]~~  
before a claimant commences an action *or amends a complaint to add a cause of action for a constructional defect* against a contractor ~~[for damages arising from a constructional defect.]~~ , *subcontractor, supplier or design professional* the claimant ~~[must]~~ ;

(a) *Must* give written notice by certified mail, return receipt requested, to the contractor, at the contractor's ~~[last known address, specifying]~~ *address listed in the records of the State Contractors' Board or in the records of the office of the county or city clerk or at the contractor's last known address if his address is not listed in those records; and*

(b) *May* give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect, if the claimant knows that the contractor is no longer licensed in this state or that he no longer acts as a contractor in this state.

2. *The notice given pursuant to subsection 1 must:*

(a) *Include a statement that the notice is being given to satisfy the requirements of this section;*

(b) *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]~~ ; and

(c) *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.

3. *Notice that includes an expert opinion concerning the cause of the constructional defects and the nature and extent of the damage or injury resulting from the defects which is based on a valid and reliable representative sample of the components of the residences or appurtenances may be used as notice of the common constructional defects within the residences or appurtenances to which the expert opinion applies.*

4. *Except as otherwise provided in subsection 5, one notice may be sent relating to all similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects if:*

(a) An expert opinion *is obtained* concerning the cause of the *common constructional* defects and the nature and extent of the damage or injury resulting from the *common constructional* defects ;

(b) *That expert opinion concludes that* based on a *valid and reliable* representative sample of the components of the residences and appurtenances ~~[involved]~~ *included* in the ~~[action satisfies the requirements of this section. During the 45 day period after the contractor receives the notice, on his written request, the contractor is entitled to inspect the property that is the subject of the claim to determine the nature and cause of the defect, damage or injury and the nature and extent of repairs necessary to remedy the defect. The contractor shall, before making the inspection, provide reasonable notice of the inspection and shall make the inspection at a reasonable time. The contractor may take reasonable steps to establish the existence of the defect.~~

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

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

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

~~—(b) Must respond to each constructional defect set forth in the claimant's notice, and describe in reasonable detail the cause of the~~

~~defect, if known, the nature and extent of the damage or injury resulting from the defect, and, unless the response is limited to a proposal for monetary compensation, the method, adequacy and estimated cost of any proposed repair.~~

~~—(c) May include:~~

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

~~—(2) If the contractor or his subcontractor is licensed to make the repairs, an agreement by the contractor or subcontractor to make the repairs.~~

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

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

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

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

~~—6. As used in this section, "subcontractor" means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.] notice, it is the opinion of the expert that those similarly situated residences and appurtenances may have such common constructional defects; and~~

~~(c) A copy of the expert opinion is included with the notice.~~

~~5. A representative of a homeowner's association may send notice pursuant to this section on behalf of an association that is responsible for a residence or appurtenance if the representative is acting within the scope of his duties pursuant to chapter 116 or 117 of NRS.~~

~~6. Notice is not required pursuant to this section before commencing an action if:~~

~~(a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or~~

*(b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.*

**Sec. 21.** NRS 40.650 is hereby amended to read as follows:

40.650 1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response ~~[made]~~ pursuant to ~~[NRS 40.645 or 40.682 or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement]~~ *paragraph (b) of subsection 2 of section 9 of this act* and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, *and sections 2 to 15, inclusive, of this act*, the court in which the action is commenced may:

- (a) Deny the claimant's attorney's fees and costs; and
- (b) Award attorney's fees and costs to the contractor.

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

2. If a contractor, *subcontractor, supplier or design professional* fails to:

- (a) *Comply with the provisions of section 9 of this act;*
- (b) Make an offer of settlement;

~~[(b)]~~ (c) Make a good faith response to the claim asserting no liability;

~~[(c) Complete, in a good and workmanlike manner, the repairs specified in an accepted offer;]~~

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

(e) Participate in mediation, the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, *and sections 2 to 15, inclusive, of this act* do not apply and the claimant may commence an action *or amend a complaint to add a cause of action for a constructional defect* without satisfying any other requirement of NRS 40.600 to 40.695, inclusive ~~[(c)]~~, *and sections 2 to 15, inclusive, of this act*.

3. *If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to NRS 690B.100 to 690B.180, inclusive, a claimant shall diligently pursue a claim under the contract.* If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, *subcontractor, supplier or design professional* have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

*4. Nothing in this section prohibits an offer of judgment pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS 17.115 if the offer of judgment includes all damages to which the claimant is entitled pursuant to NRS 40.655.*

**Sec. 22.** NRS 40.655 is hereby amended to read as follows:

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

(a) Any reasonable attorney's fees;

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

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

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

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

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

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

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

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

(g) Any interest provided by statute.

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

3. If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, *and sections 2 to 15, inclusive, of this act*, the claimant may not recover from the contractor, as a result of the constructional defect, anything other than that which is provided pursuant to NRS 40.600 to 40.695, inclusive ~~§~~, *and sections 2 to 15, inclusive, of this act*.

4. *This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.*

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



caused by a failure of the load-bearing portion of the residence or appurtenance.

**Sec. 23.** NRS 40.660 is hereby amended to read as follows:

40.660 An offer of settlement *made pursuant to paragraph (b) of subsection 2 of section 9 of this act* that is not accepted within ~~1:~~

~~1. In a complex matter, 45 days; or~~

~~2. In a matter that is not a complex matter, 25 days.]~~

*35 days* after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of his failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.

**Sec. 24.** NRS 40.665 is hereby amended to read as follows:

40.665 In addition to any other method provided for settling a claim pursuant to NRS 40.600 to 40.695, inclusive, *and sections 2 to 15, inclusive, of this act*, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include provisions which reimburse the claimant for:

1. The market value of the residence as if no constructional defect existed, except that if a residence is less than 2 years of age and was purchased from the contractor against whom the claim is brought, the market value is the price at which the residence was sold to the claimant;

2. The value of any improvements made to the property by a person other than the contractor;

3. Reasonable attorney's fees and fees for experts; and

4. Any costs, including costs and expenses for moving and costs, points and fees for loans.

Any offer of settlement made that includes the items listed in this section shall be deemed reasonable for the purposes of subsection 1 of NRS 40.650.

**Sec. 25.** NRS 40.667 is hereby amended to read as follows:

40.667 1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a claim for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.

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

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

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

(c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in NRS 40.600 to 40.695, inclusive ~~[ ]~~, *and sections 2 to 15, inclusive, of this act.*

3. *The provisions of this section do not apply to repairs which are made pursuant to an election to repair pursuant to section 9 of this act.*

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

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

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

**Sec. 26.** NRS 40.670 is hereby amended to read as follows:

40.670 1. A contractor , *subcontractor, supplier or design professional* who receives written notice of a constructional defect resulting from work performed by the contractor , ~~[or his agent, employee or]~~ subcontractor , *supplier or design professional* which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor , *subcontractor, supplier or design professional* shall not cure the defect by making any repairs for which he is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor , *subcontractor, supplier or design professional* fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor , *subcontractor, supplier or design professional* the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.

2. A contractor , *subcontractor, supplier or design professional* 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 attorney's fees and costs 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 , *subcontractor, supplier or design professional* is subject to the provisions of subsection 1.

**Sec. 27.** NRS 40.672 is hereby amended to read as follows:

40.672 Except as otherwise provided in NRS 40.670, if a contractor , *subcontractor, supplier or design professional* receives written notice of a constructional defect ~~[that is not part of a~~

~~complex matter~~] not more than 1 year after the close of escrow of the initial purchase of the residence, the contractor, *subcontractor, supplier or design professional* shall make the repairs within 45 days after ~~[the contractor receives]~~ *receiving* the written notice unless completion is delayed by the claimant or by other events beyond the control of the contractor, *subcontractor, supplier or design professional*, or timely completion of repairs is not reasonably possible. The contractor, *subcontractor, supplier or design professional* and claimant may agree in writing to extend the period prescribed by this section. If ~~[the]~~ *a* contractor *or subcontractor* fails to comply with this section, he is immediately subject to discipline pursuant to NRS 624.300.

**Sec. 28.** NRS 40.680 is hereby amended to read as follows:

40.680 1. Except as otherwise provided in this chapter, before *a claimant commences* an action ~~[based on a claim governed by NRS 40.600 to 40.695, inclusive, may be commenced in court,]~~ *or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional*, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor, *subcontractor, supplier or design professional* and the claimant.

2. The claimant and ~~[contractor]~~ *each party alleged to have caused the constructional defect* must select a mediator by agreement. If the claimant and ~~[contractor]~~ *the other parties* fail to agree upon a mediator within ~~[45]~~ *20* days after a mediator is first selected by the claimant, ~~[either]~~ *any* 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]~~ *30* days after the matter is submitted to *him and shall complete the mediation within 45 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]~~

3. *Before* the mediation begins ~~[,]~~ :

(a) *The claimant shall* deposit \$50 with the mediation service ; and ~~[the contractor]~~

(b) *Each other party* shall deposit with the mediation service , *in equal shares*, 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]~~ *and* 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.]~~

4. Unless otherwise agreed, the total fees for each day of mediation and the mediator must not exceed \$750 per day.

~~[3-]~~ 5. If the parties do not reach an agreement concerning the matter during mediation or if ~~[the contractor]~~ *any party who is alleged to have caused the constructional defect* fails to pay the required fees and appear, the claimant may commence ~~[his]~~ *an action or amend a complaint to add a cause of action for the constructional defect* 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]~~ *Any* party may petition the court in which the action is commenced for the appointment of a special master.

~~[4-]~~ 6. A special master appointed pursuant to subsection ~~[3]~~ 5 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.

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

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

~~[5-]~~ 7. Upon application by a party to the court in which the action is commenced, any decision or other action taken by a special master appointed pursuant to this section may be appealed to the court for a decision.

~~[6-]~~ 8. A report issued by a mediator or special master that indicates that ~~[either]~~ *a* party has failed to appear before him or to mediate in good faith is admissible in the action, but a statement or admission made by ~~[either]~~ *a* party in the course of mediation is not admissible.

**Sec. 29.** NRS 40.688 is hereby amended to read as follows:

40.688 1. If a claimant attempts to sell a residence that is or has been the subject of a claim governed by NRS 40.600 to 40.695, inclusive, *and sections 2 to 15, inclusive, of this act*, he shall disclose, in writing, to any prospective purchaser of the residence, not less than 30 days before the close of escrow for the sale of

the residence or, if escrow is to close less than 30 days after the execution of the sales agreement, then immediately upon the execution of the sales agreement or, if a claim is initiated less than 30 days before the close of escrow, within 24 hours after giving written notice to the contractor pursuant to ~~[subsection 1 of]~~ NRS 40.645 : ~~[for subsection 1 of NRS 40.682.]~~

(a) All notices given by the claimant to the contractor pursuant to NRS 40.600 to 40.695, inclusive, *and sections 2 to 15, inclusive, of this act* that are related to the residence;

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

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

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

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

**Sec. 30.** NRS 40.6882 is hereby amended to read as follows:

40.6882 ~~["Complainant"]~~ *As used in NRS 40.6884 and 40.6885, unless the context otherwise requires, "complainant"* means a person who makes a claim or files an action against a design professional pursuant to NRS 40.600 to 40.695, inclusive ~~[.]~~, *and sections 2 to 15, inclusive, of this act.*

**Sec. 31.** NRS 40.692 is hereby amended to read as follows:

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

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

~~—(a) Is attributable, in whole or in part, to such a contractor;~~

~~—(b) Is located on the same property described in the original complaint; and~~

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

~~—2. The]~~ A claimant *who commences an action for a constructional defect* is not required to give written notice of a defect pursuant to ~~[subsection 1 of NRS 40.645 or subsection 1 of~~

~~NRS 40.682]~~ **NRS 40.645** to any person who ~~is joined to or~~ intervenes in the action as a party after it is commenced. If such a person becomes a party to the action:

~~[(a)]~~ **1.** For the purposes of ~~[subsection 1 of NRS 40.645 or subsection 1 of NRS 40.682,]~~ **NRS 40.645**, the person shall be deemed to have been given notice of the defect by the claimant on the date on which the person becomes a party to the action; and

~~[(b)]~~ **2.** The provisions of NRS 40.600 to 40.695, inclusive, **and sections 2 to 15, inclusive, of this act** apply to the person after that date.

**Sec. 32.** NRS 40.695 is hereby amended to read as follows:

40.695 1. Except as otherwise provided in subsection 2, statutes of limitation or repose applicable to a claim based on a constructional defect governed by NRS 40.600 to 40.695, inclusive, **and sections 2 to 15, inclusive, of this act** are tolled from the time notice of the claim is given, until 30 days after mediation is concluded or waived in writing pursuant to NRS 40.680 . ~~for subsection 4 of NRS 40.682.]~~

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

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

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

**Sec. 33.** NRS 40.613, 40.682, 40.6881 and 40.6883 are hereby repealed.

**Sec. 34.** The amendatory provisions of this act apply only to claim for a constructional defect that arises before, on or after August 1, 2003, unless the claimant:

1. Has commenced an action concerning the claim in accordance with NRS 40.600 to 40.695, inclusive, before August 1, 2003; or

2. Has given notice of the claim to the contractor, subcontractor, supplier or design professional pursuant to NRS 40.600 to 40.695, inclusive, before August 1, 2003, including notice on behalf of named and unnamed claimants.

**Sec. 35.** 1. This section and section 12 of this act become effective upon passage and approval for the purpose of adopting regulations and on August 1, 2003, for all other purposes.

2. Sections 1 to 11, inclusive, and 13 to 34, inclusive, of this act become effective on August 1, 2003.