

SENATE BILL NO. 349—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to constructional defects. (BDR 3-1151)

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 constructional defects; revising the definition of “constructional defect”; providing that a claimant may not recover attorney’s fees as damages; requiring an attorney to obtain an affidavit from a claimant and file the affidavit with the court under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of this bill amends the existing definition of “constructional defect” to provide that a constructional defect is a defect: (1) which presents an unreasonable risk of injury to a person or property; or (2) which violates the law, unless the workmanship exceeds the standards set forth in any applicable codes and ordinances, which causes physical damages and which is not completed in a good and workmanlike manner. (NRS 40.615)

Section 2 of this bill removes from existing law the provision that allows a claimant to recover reasonable attorney’s fees for a claim for a constructional defect. (NRS 40.655)

Section 3 of this bill provides that an attorney must obtain from a claimant a signed affidavit stating that the claimant has been notified of certain provisions relating to constructional defects. If the claimant is a representative of a homeowners’ association, **section 3** requires that the affidavit also attest that the claimant has notified the units’ owners on whose behalf the claim is brought of the provisions of this section. **Section 3** also provides that in a subsequent action, the attorney must file the affidavit with the court or the action will be dismissed. (NRS 40.688)



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

Section 1. NRS 40.615 is hereby amended to read as follows:

40.615 “Constructional defect” 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 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 ~~H~~, *which presents an unreasonable risk of injury to a person or property or:*

1. Which is done in violation of law, including, without limitation, in violation of local codes or ordinances ~~H~~, *unless the workmanship of the design, construction, manufacture, repair or landscaping exceeds the standards set forth in any applicable codes and ordinances;*

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

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. ~~I; or~~

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

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

(a) ~~I Any reasonable attorney’s fees;~~

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

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

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



~~(f)~~ (e) 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)~~ (f) Any interest provided by statute.

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

~~—3.1~~ If a contractor complies with the provisions of NRS 40.600 to 40.695, inclusive, 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.

~~(4.1)~~ 3. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

~~(5.1)~~ 4. 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. 3. 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, 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 NRS 40.645:

(a) All notices given by the claimant to the contractor pursuant to NRS 40.600 to 40.695, inclusive, 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.



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1 2. Before taking any action on a claim pursuant to NRS 40.600
2 to 40.695, inclusive, the attorney for a claimant shall ~~notify~~ *obtain*
3 *a signed affidavit from* the claimant ~~{in-writing}~~ *stating that the*
4 *claimant has been notified* of the provisions of this section. *If*
5 *the claimant is a representative of a homeowners' association, the*
6 *affidavit must attest that the claimant has notified the units'*
7 *owners on whose behalf the claim is brought of the provisions of*
8 *this section. At the time of commencing an action or amending a*
9 *complaint to add a cause of action for a constructional defect, the*
10 *attorney shall file the affidavit with the court. The court shall*
11 *dismiss the action or cause of action if the attorney fails to file the*
12 *required affidavit.*

13 **Sec. 4.** The amendatory provisions of this act apply to any
14 claim that arises on or after October 1, 2009.

