

ASSEMBLY BILL NO. 184—ASSEMBLYMEN DUNCAN, HICKEY,
HARDY, FIORE, HANSEN; PAUL ANDERSON, ELLISON,
GRADY, HAMBRICK, KIRNER, LIVERMORE, OSCARSON,
STEWART, WHEELER AND WOODBURY

MARCH 1, 2013

JOINT SPONSORS: SENATORS CEGAVSKE AND GUSTAVSON

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing construction defects.
(BDR 3-649)

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; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; making an appropriation for a study; 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.

Existing law authorizes a claimant to recover reasonable attorney’s fees for a claim for a constructional defect in certain circumstances. (NRS 40.655) **Section 2** of this bill removes this provision. Existing law also requires an attorney for a claimant to notify the claimant in writing of certain provisions of law relating to constructional defects before the attorney takes any action on a claim for a constructional defect. (NRS 40.688) **Section 3** of this bill revises this requirement



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and instead 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.

Existing law generally limits the period in which an action for damages caused by a deficiency in construction of improvements to real property may be commenced after substantial completion of the improvement, unless the deficiency is a result of willful misconduct or was fraudulently concealed. (NRS 11.202-11.205) These periods of limitation are known as statutes of repose, and the period set forth in each statute of repose during which an action must be commenced after substantial completion of the improvement depends on the particular type of deficiency in construction. **Section 4** of this bill reduces the period in the existing statute of repose for a known deficiency in construction from 10 years after substantial completion of the improvement to 3 years. **Section 5** of this bill reduces the period in the existing statute of repose for a latent deficiency from 8 years after substantial completion of the improvement to 4 years. **Section 6** of this bill reduces the period in the existing statute of repose for a patent deficiency from 6 years after substantial completion of the improvement to 3 years.

Sections 4-6 also eliminate the existing provisions that allow such actions to be commenced within 2 years after the date of an injury which occurs during the final year of the particular period of limitation. **Section 7** of this bill provides that the revised statutes of repose set forth in **sections 4-6** apply retroactively under certain circumstances. **Section 7** also establishes a 1-year grace period during which a person may commence an action pursuant to NRS 11.203, 11.204 or 11.205 if the action accrued before October 1, 2013.

This bill also makes an appropriation for a study of the impact of the current laws of the State of Nevada on the arbitration, mediation and litigation of actions for damages resulting from deficiencies in construction.

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 ***††, 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 ***††, 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. ~~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) ~~Any reasonable attorney's fees;~~

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

~~(e)~~ (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.~~ 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.



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~~14~~ 3. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.

~~15~~ 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, the claimant 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.

2. Before taking any action on a claim pursuant to NRS 40.600 to 40.695, inclusive, the attorney for a claimant shall ~~notify~~ *obtain a signed affidavit from* the claimant ~~in writing~~ *stating that the claimant has been notified* of the provisions of this section. *If the claimant is a representative of a homeowners' association, the affidavit must attest that the claimant has notified the units' owners on whose behalf the claim is brought of the provisions of this section. At the time of commencing an action or amending a complaint to add a cause of action for a constructional defect, the attorney shall file the affidavit with the court. The action or cause of action will be dismissed by the court if the attorney fails to file the required affidavit.*

Sec. 4. NRS 11.203 is hereby amended to read as follows:

11.203 1. Except as otherwise provided in NRS 11.202 , 11.204 and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~10~~ 3



1 years after the substantial completion of such an improvement, for
2 the recovery of damages for:

3 (a) Any deficiency in the design, planning, supervision or
4 observation of construction or the construction of such an
5 improvement which is known or through the use of reasonable
6 diligence should have been known to him or her;

7 (b) Injury to real or personal property caused by any such
8 deficiency; or

9 (c) Injury to or the wrongful death of a person caused by any
10 such deficiency.

11 2. ~~Notwithstanding the provisions of NRS 11.190 and~~
12 ~~subsection 1 of this section, if an injury occurs in the 10th year after~~
13 ~~the substantial completion of such an improvement, an action for~~
14 ~~damages for injury to property or person, damages for wrongful~~
15 ~~death resulting from such injury or damages for breach of contract~~
16 ~~may be commenced within 2 years after the date of such injury,~~
17 ~~irrespective of the date of death, but in no event may an action be~~
18 ~~commenced more than 12 years after the substantial completion of~~
19 ~~the improvement.~~

20 ~~3.~~ The provisions of this section do not apply to a claim for
21 indemnity or contribution.

22 **Sec. 5.** NRS 11.204 is hereby amended to read as follows:

23 11.204 1. Except as otherwise provided in NRS 11.202 ~~1~~
24 ~~11.203~~ and 11.206, no action may be commenced against the
25 owner, occupier or any person performing or furnishing the design,
26 planning, supervision or observation of construction, or the
27 construction of an improvement to real property more than ~~18~~ 4
28 years after the substantial completion of such an improvement, for
29 the recovery of damages for:

30 (a) Any latent deficiency in the design, planning, supervision or
31 observation of construction or the construction of such an
32 improvement;

33 (b) Injury to real or personal property caused by any such
34 deficiency; or

35 (c) Injury to or the wrongful death of a person caused by any
36 such deficiency.

37 2. ~~Notwithstanding the provisions of NRS 11.190 and~~
38 ~~subsection 1 of this section, if an injury occurs in the eighth year~~
39 ~~after the substantial completion of such an improvement, an action~~
40 ~~for damages for injury to property or person, damages for wrongful~~
41 ~~death resulting from such injury or damages for breach of contract~~
42 ~~may be commenced within 2 years after the date of such injury,~~
43 ~~irrespective of the date of death, but in no event may an action be~~
44 ~~commenced more than 10 years after the substantial completion of~~
45 ~~the improvement.~~



~~3.1~~ The provisions of this section do not apply to a claim for indemnity or contribution.

~~4.1~~ 3. For the purposes of this section, "latent deficiency" means a deficiency which is not apparent by reasonable inspection.

Sec. 6. NRS 11.205 is hereby amended to read as follows:

11.205 1. Except as otherwise provided in NRS 11.202 ~~11.2031~~ and 11.206, no action may be commenced against the owner, occupier or any person performing or furnishing the design, planning, supervision or observation of construction, or the construction of an improvement to real property more than ~~16~~ 3 years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any patent deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement;

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or the wrongful death of a person caused by any such deficiency.

2. ~~Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, if an injury occurs in the sixth year after the substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 2 years after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 8 years after the substantial completion of the improvement.~~

~~3.1~~ The provisions of this section do not apply to a claim for indemnity or contribution.

~~4.1~~ 3. For the purposes of this section, "patent deficiency" means a deficiency which is apparent by reasonable inspection.

Sec. 6.5. 1. There is hereby appropriated from the State General Fund to the Legislative Fund the sum of \$150,000 for the purpose of contracting with a consultant to conduct a study of the impact of the current laws of the State of Nevada on the arbitration, mediation and litigation of actions for damages resulting from deficiencies in construction.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2015, and any portion of the appropriated money remaining must not be spent for any purpose after September 18, 2015, and must be reverted to the State General Fund on or before September 18, 2015.

Sec. 7. 1. The amendatory provisions of sections 1, 2 and 3 of this act apply to any claim that arises on or after October 1, 2013.



1 2. Except as otherwise provided in subsection 3, the period of
2 limitations on actions set forth in NRS 11.203, 11.204 and 11.205,
3 as amended by sections 4, 5 and 6 of this act, apply retroactively to
4 actions in which the substantial completion of the improvement to
5 real property occurred before October 1, 2013.

6 3. The provisions of subsection 2 do not limit an action:

7 (a) That accrued before October 1, 2013, and is commenced
8 before October 1, 2014; or

9 (b) If doing so would constitute an impairment of the obligation
10 of contracts under the United States Constitution or the Nevada
11 Constitution.

