

SENATE BILL NO. 411—SENATOR ROBERSON

MARCH 18, 2013

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes relating to real property.
(BDR 54-911)

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

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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 property; requiring the Commissioner of Mortgage Lending to adopt regulations for the licensing of residential mortgage loan servicers; authorizing fees for such licensure; 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; revising provisions concerning the late renewal of licenses and permits of certain real estate professionals; revising provisions relating to certain disclosures required for the sale of real property; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the regulation and licensing of a real estate broker, broker-salesperson or salesperson by the Real Estate Division of the Department of Business and Industry. (Chapter 645 of NRS) **Section 1** of this bill revises provisions relating to the denial of a license by the Division.

Existing law authorizes persons licensed as real estate brokers, broker-salespersons and salespersons to obtain permits to engage in property management or to engage in business as a business broker. (NRS 645.6052, 645.863) Under existing law, a person who fails to apply for a renewal of his or her license before the expiration of the license must apply for an original license, except that within 1 year after such expiration a renewal may be issued upon payment of a fee one and one-half times the amount otherwise required for renewal. (NRS 645.785) **Section 2** of this bill reduces that fee to \$100, in addition to the amount otherwise required



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for renewal. **Section 2** also authorizes a person to renew a permit upon payment of a fee in the amount of \$20 within 1 year after expiration, in addition to the amount otherwise required for renewal and compliance with any other requirement relating to the renewal of such a permit.

Under existing law, the Commissioner of Mortgage Lending is required to regulate the activities of escrow agents, mortgage brokers, mortgage agents, mortgage bankers and certain other professions relating to mortgage lending. Existing law sets forth the requirements for the licensure of escrow agents, mortgage brokers, mortgage agents and mortgage bankers, and the Commissioner is required to adopt regulations for the licensure of persons who perform certain services for compensation, foreclosure consultants and loan modification consultants. (Chapters 645A, 645B and 645E of NRS, NRS 645F.390)

Section 3 of this bill defines a "residential mortgage loan servicer" as a person or institution which directly or indirectly services residential mortgage loans, and **section 6** of this bill requires the Commissioner to adopt regulations for the licensure of residential mortgage loan servicers. The regulations adopted by the Commissioner must include: (1) the method and form of application for a license; (2) the method and form of the issuance, denial or renewal of a license; (3) the grounds and procedures for the revocation, suspension or nonrenewal of a license; (4) the imposition of reasonable fees for application and licensure; and (5) any provisions necessary to comply with the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. §§ 5101 et seq.

Section 7 of this bill requires a residential mortgage loan servicer to take reasonable steps to ensure that all employees and independent contractors of the residential mortgage loan servicer comply with certain statutory provisions and regulations and further requires a residential mortgage loan servicer to take corrective action if the residential mortgage loan servicer determines that an employee or independent contractor is not in compliance with those statutes and regulations. **Section 7** also requires a residential mortgage loan servicer to record the number and nature of certain complaints made about its employees or independent contractors and, if the residential mortgage loan servicer engages in telemarketing activities, to perform random recording and testing of oral representations made by its sales and customer service representatives. **Section 8** of this bill prohibits a person who knows or reasonably should know that a residential mortgage loan servicer is in violation of certain statutes or regulations from providing substantial assistance or support to the residential mortgage loan servicer. Existing law authorizes the Commissioner to impose administrative penalties for any violation of the provisions governing mortgage lending. (NRS 645F.410) The amendatory provisions of **sections 3-8** effectively extend the Commissioner's authority to impose administrative fines for any such violations by a residential mortgage loan servicer or person who performs acts for which a license as a residential mortgage loan servicer is required.

Section 13 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 14** 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 15** of this bill revises this requirement and instead provides that an attorney must obtain from a claimant a signed affidavit



68 stating that the claimant has been notified of certain provisions relating to
69 constructional defects. If the claimant is a representative of a homeowners'
70 association, **section 15** requires that the affidavit also attest that the claimant has
71 notified the units' owners on whose behalf the claim is brought of the provisions of
72 this section. **Section 15** also provides that in a subsequent action, the attorney must
73 file the affidavit with the court or the action will be dismissed.

74 Existing law generally limits the period in which an action for damages caused
75 by a deficiency in construction of improvements to real property may be
76 commenced after substantial completion of the improvement, unless the deficiency
77 is a result of willful misconduct or was fraudulently concealed. (NRS 11.202-
78 11.205) These periods of limitation are known as statutes of repose, and the period
79 set forth in each statute of repose during which an action must be commenced after
80 substantial completion of the improvement depends on the particular type of
81 deficiency in construction. **Section 10** of this bill reduces the period in the existing
82 statute of repose for a known deficiency in construction from 10 years after
83 substantial completion of the improvement to 3 years. **Section 11** of this bill
84 reduces the period in the existing statute of repose for a latent deficiency from 8
85 years after substantial completion of the improvement to 4 years. **Section 12** of this
86 bill reduces the period in the existing statute of repose for a patent deficiency from
87 6 years after substantial completion of the improvement to 3 years.

88 **Sections 10-12** also eliminate the existing provisions that allow such actions to
89 be commenced within 2 years after the date of an injury which occurs during the
90 final year of the particular period of limitation. **Section 18** of this bill provides that
91 the revised statutes of repose set forth in **sections 10-12** apply retroactively under
92 certain circumstances. **Section 18** also establishes a 1-year grace period during
93 which a person may commence an action pursuant to NRS 11.203, 11.204 or
94 11.205 if the action accrued before October 1, 2013.

95 Existing law: (1) requires the disclosure of any known defect in a property
96 before conveyance of the property to a purchaser; and (2) establishes certain
97 remedies to a purchaser of residential property in the event such disclosures are not
98 made. (NRS 113.150) **Section 16** of this bill provides that a purchaser of residential
99 property may not waive his or her rights with respect to such disclosures and
100 remedies.

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

1 **Section 1.** NRS 645.330 is hereby amended to read as follows:

2 645.330 1. Except as otherwise provided by a specific
3 statute, the Division may approve an application for a license for a
4 person who meets all the following requirements:

5 (a) Has a good reputation for honesty, trustworthiness and
6 integrity and who offers proof of those qualifications satisfactory to
7 the Division.

8 (b) Has not made a false statement of material fact on his or her
9 application.

10 (c) Is competent to transact the business of a real estate broker,
11 broker-salesperson or salesperson in a manner which will safeguard
12 the interests of the public.

13 (d) Has passed the examination.



(e) Has submitted all information required to complete the application.

2. The Division ~~may~~ *may*:

(a) ~~May deny~~ *Deny* a license to any person who has been convicted of, or entered a plea of guilty, guilty but mentally ill or nolo contendere to, forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, engaging in a real estate business without a license, possessing for the purpose of sale any controlled substance or any crime involving moral turpitude, in any court of competent jurisdiction in the United States or elsewhere; and

(b) ~~Shall not issue~~ *Withhold the issuance of* a license to such a person until ~~at least~~ 3 years after:

(1) The person pays any fine or restitution ordered by the court; or

(2) The expiration of the period of the person's parole, probation or sentence,

↳ whichever is later.

3. Suspension or revocation of a license pursuant to this chapter or any prior revocation or current suspension in this or any other state, district or territory of the United States or any foreign country before the date of the application is grounds for refusal to grant a license.

4. Except as otherwise provided in NRS 645.332, a person may not be licensed as a real estate broker unless the person has been actively engaged as a full-time licensed real estate broker-salesperson or salesperson in this State, or actively engaged as a full-time licensed real estate broker, broker-salesperson or salesperson in another state or the District of Columbia, for at least 2 of the 4 years immediately preceding the issuance of a broker's license.

Sec. 2. NRS 645.785 is hereby amended to read as follows:

645.785 *1. If a licensee fails to apply for a renewal of his or her license ~~prior to~~ before the date of the expiration thereof, no license may be issued to the licensee except upon another application for an original license, except that within 1 year ~~to~~ after such expiration a renewal may be issued upon payment of a fee ~~one and one-half times~~ in the amount of \$100, in addition to the amount otherwise required for renewal.*

2. If a licensee fails to apply for a renewal of his or her permit before the date of the expiration thereof, no permit may be issued to the licensee except upon another application for an original permit, except that within 1 year after such expiration, a renewal may be issued upon payment of a fee in the amount of \$20, in addition to the amount otherwise required for renewal and



1 *compliance with any other requirement for renewal pursuant to*
2 *NRS 645.6052 or 645.863.*

3 **Sec. 3.** Chapter 645F of NRS is hereby amended by adding
4 thereto a new section to read as follows:

5 *“Residential mortgage loan servicer” means a person who, in*
6 *connection with a residential mortgage loan, directly or indirectly*
7 *collects or remits, or has the right to collect or remit, for any*
8 *lender, mortgage banker, note owner, note holder or for the*
9 *person’s own account, six or more payments of principal, interest*
10 *or an amount to be placed in escrow, including, without limitation,*
11 *any amount for the payment of hazard insurance or taxes on a*
12 *residential mortgage loan, in accordance with the terms of the*
13 *residential mortgage loan, a mortgage servicing agreement or an*
14 *agreement with the mortgagor.*

15 **Sec. 4.** NRS 645F.300 is hereby amended to read as follows:

16 645F.300 As used in NRS 645F.300 to 645F.450, inclusive,
17 *and section 3 of this act*, unless the context otherwise requires, the
18 words and terms defined in NRS 645F.310 to 645F.370, inclusive,
19 *and section 3 of this act* have the meanings ascribed to them in
20 those sections.

21 **Sec. 5.** NRS 645F.380 is hereby amended to read as follows:

22 645F.380 The provisions of NRS 645F.300 to 645F.450,
23 inclusive, *and section 3 of this act* do not apply to, and the terms
24 “foreclosure consultant” and “foreclosure purchaser” do not include:

25 1. An attorney at law rendering services in the performance of
26 his or her duties as an attorney at law, unless the attorney at law is
27 rendering those services in the course and scope of his or her
28 employment by or other affiliation with a person who is licensed or
29 required to be licensed pursuant to NRS 645F.390;

30 2. A provider of debt-management services registered pursuant
31 to chapter 676A of NRS while providing debt-management services
32 pursuant to chapter 676A of NRS;

33 3. A person or the authorized agent of a person acting under the
34 provisions of a program sponsored by the Federal Government, this
35 State or a local government, including, without limitation, the
36 Department of Housing and Urban Development, the Federal Home
37 Loan Mortgage Corporation, the Federal National Mortgage
38 Association or the Federal Home Loan Bank System;

39 4. A person who holds or is owed an obligation secured by a
40 mortgage or other lien on a residence in foreclosure if the person
41 performs services in connection with this obligation or lien and the
42 obligation or lien did not arise as the result of or as part of a
43 proposed foreclosure reconveyance;

44 5. Any person doing business under the laws of this State or of
45 the United States relating to banks, trust companies, savings and



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1 loan associations, industrial loan and thrift companies, regulated
2 lenders, credit unions, insurance companies, or a mortgagee which
3 is a United States Department of Housing and Urban Development
4 approved mortgagee and any subsidiary or affiliate of those persons,
5 and any agent or employee of those persons while engaged in the
6 business of those persons;

7 6. A person, other than a person who is licensed pursuant to
8 NRS 645F.390, who is licensed pursuant to chapter 692A or any
9 chapter of title 54 of NRS while acting under the authority of the
10 license;

11 7. A nonprofit agency or organization that offers credit
12 counseling or advice to a homeowner of a residence in foreclosure
13 or a person in default on a loan; or

14 8. A judgment creditor of the homeowner whose claim accrued
15 before the recording of the notice of the pendency of an action for
16 foreclosure against the homeowner pursuant to NRS 14.010 or the
17 recording of the notice of default and election to sell pursuant to
18 NRS 107.080.

19 **Sec. 6.** NRS 645F.390 is hereby amended to read as follows:

20 645F.390 1. The Commissioner shall adopt regulations for
21 the licensing of:

22 (a) A person who performs any covered service for
23 compensation;

24 (b) A foreclosure consultant; ~~and~~

25 (c) A loan modification consultant ~~H~~; and

26 ***(d) A residential mortgage loan servicer.***

27 2. The regulations must prescribe, without limitation:

28 (a) The method and form of application for a license;

29 (b) The method and form of the issuance, denial or renewal of a
30 license;

31 (c) The grounds and procedures for the revocation, suspension
32 or nonrenewal of a license;

33 (d) The imposition of reasonable fees for application and
34 licensure; and

35 (e) Any provisions necessary to comply with the provisions of
36 the Secure and Fair Enforcement for Mortgage Licensing Act of
37 2008, Public Law 110-289, 12 U.S.C. §§ 5101 et seq., including
38 registration with the Registry, and the Mortgage Assistance Relief
39 Services Rule, 16 C.F.R. Part 322, as promulgated by the Federal
40 Trade Commission.

41 3. An application for a license pursuant to this section must
42 include a complete set of the fingerprints of the applicant or, if the
43 applicant is not a natural person, a complete set of the fingerprints of
44 each person who will have an interest in the person who performs
45 any covered service as a principal, partner, officer, director or



1 trustee, and written permission authorizing the Division to forward
2 the fingerprints to the Central Repository for Nevada Records of
3 Criminal History for submission to the Federal Bureau of
4 Investigation for its report.

5 **Sec. 7.** NRS 645F.396 is hereby amended to read as follows:

6 645F.396 1. A person who performs any covered service for
7 compensation, a foreclosure consultant and a loan modification
8 consultant shall keep each of the following records for a period of
9 not less than 24 months after the date the record is created:

10 (a) Each contract or other agreement between the person who
11 performs any covered service for compensation, foreclosure
12 consultant or loan modification consultant and a homeowner.

13 (b) A copy of each written communication between the person
14 who performs any covered service for compensation, foreclosure
15 consultant or loan modification consultant and a homeowner which
16 occurred before the date on which the homeowner entered into a
17 contract for covered services.

18 (c) A copy of every document or telephone recording created in
19 connection with the requirements of subsection 2.

20 (d) The file of each homeowner, which must include, without
21 limitation, the name of the homeowner, his or her telephone number,
22 the amount of money paid by the homeowner and a description of
23 the covered services purchased by the homeowner.

24 (e) For each covered service, a copy of every materially
25 different sales script, training material, commercial communication
26 or any other marketing material, including, without limitation, any
27 material published on an Internet website.

28 (f) A copy of each disclosure provided to a homeowner pursuant
29 to NRS 645F.398.

30 2. A person who performs any covered service for
31 compensation, a foreclosure consultant , ~~and~~ a loan modification
32 consultant *and a residential mortgage loan servicer* shall:

33 (a) Take reasonable steps to ensure that all employees and
34 independent contractors of the person who performs any covered
35 service for compensation, foreclosure consultant , ~~or~~ loan
36 modification consultant *or residential mortgage loan servicer*
37 comply with the provisions of NRS 645F.300 to 645F.450,
38 inclusive, *and section 3 of this act* and any regulations adopted
39 pursuant thereto.

40 (b) If the person who performs any covered service for
41 compensation, foreclosure consultant , ~~or~~ loan modification
42 consultant *or residential mortgage loan servicer* is engaged in the
43 telemarketing of covered services, perform random, blind recording
44 and testing of the oral representations made by persons engaged in
45 sales or other customer service functions.



(c) Establish a procedure for receiving and responding to all complaints of homeowners.

(d) Record the number and nature of complaints of homeowners regarding transactions involving an employee or independent contractor of the person who performs any covered service for compensation, foreclosure consultant , ~~for~~ loan modification consultant ~~+~~ *or residential mortgage loan servicer.*

(e) Investigate promptly and fully each complaint received from a homeowner.

(f) Take corrective action with respect to any employee or independent contractor whom the person who performs any covered service for compensation, foreclosure consultant , ~~for~~ loan modification consultant *or residential mortgage loan servicer* determines is not complying with the provisions of NRS 645F.300 to 645F.450, inclusive, *and section 3 of this act* and any regulations adopted pursuant thereto.

(g) Maintain any information necessary to demonstrate compliance with the requirements of this subsection.

3. All records kept pursuant to this section are subject to inspection and audit by the Commissioner and authorized representatives of the Commissioner.

Sec. 8. NRS 645F.445 is hereby amended to read as follows:

645F.445 A person who knows or reasonably should know that another person who performs any covered service for compensation, a foreclosure consultant , ~~for~~ a loan modification consultant *or a residential mortgage loan servicer* is in violation of any provision of NRS 645F.300 to 645F.450, inclusive, *and section 3 of this act* and any regulations adopted pursuant thereto shall not provide substantial assistance or support to the person who performs any covered service for compensation, the foreclosure consultant , ~~for~~ the loan modification consultant. ~~for~~ *the residential mortgage loan servicer.*

Sec. 9. NRS 645F.450 is hereby amended to read as follows:

645F.450 The rights, remedies and penalties provided pursuant to the provisions of NRS 645F.300 to 645F.450, inclusive, *and section 3 of this act* are cumulative and do not abrogate and are in addition to any other rights, remedies and penalties that may exist at law or in equity, including, without limitation, any criminal penalty that may be imposed pursuant to NRS 645F.430.

Sec. 10. 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 ~~for~~ *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. 11.** 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 ~~1~~ 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.

~~14.1~~ 3. For the purposes of this section, “latent deficiency” means a deficiency which is not apparent by reasonable inspection.

Sec. 12. 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 ~~161~~ 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.

~~14.1~~ 3. For the purposes of this section, “patent deficiency” means a deficiency which is apparent by reasonable inspection.

Sec. 13. 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 ~~11~~, *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 ~~11~~, *unless the workmanship of the design, construction, manufacture, repair or*



1 *landscaping exceeds the standards set forth in any applicable*
2 *codes and ordinances;*

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

6 3. Which is not completed in a good and workmanlike manner
7 in accordance with the generally accepted standard of care in the
8 industry for that type of design, construction, manufacture, repair or
9 landscaping. ~~4. Which presents an unreasonable risk of injury to a person or~~

10 ~~property.~~

11 **Sec. 14.** NRS 40.655 is hereby amended to read as follows:

12 40.655 1. Except as otherwise provided in NRS 40.650, in a
13 claim governed by NRS 40.600 to 40.695, inclusive, the claimant
14 may recover only the following damages to the extent proximately
15 caused by a constructional defect:

16 (a) ~~Any reasonable attorney's fees;~~

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

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

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

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

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

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

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

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

37 ~~(g)~~ (f) Any interest provided by statute.

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

40 ~~3.~~ If a contractor complies with the provisions of NRS 40.600
41 to 40.695, inclusive, the claimant may not recover from the
42 contractor, as a result of the constructional defect, anything other
43 than that which is provided pursuant to NRS 40.600 to 40.695,
44 inclusive.



1 ~~14.1~~ 3. This section must not be construed as impairing any
2 contractual rights between a contractor and a subcontractor, supplier
3 or design professional.

4 ~~15.1~~ 4. As used in this section, "structural failure" means
5 physical damage to the load-bearing portion of a residence or
6 appurtenance caused by a failure of the load-bearing portion of the
7 residence or appurtenance.

8 **Sec. 15.** NRS 40.688 is hereby amended to read as follows:

9 40.688 1. If a claimant attempts to sell a residence that is or
10 has been the subject of a claim governed by NRS 40.600 to 40.695,
11 inclusive, the claimant shall disclose, in writing, to any prospective
12 purchaser of the residence, not less than 30 days before the close of
13 escrow for the sale of the residence or, if escrow is to close less than
14 30 days after the execution of the sales agreement, then immediately
15 upon the execution of the sales agreement or, if a claim is initiated
16 less than 30 days before the close of escrow, within 24 hours after
17 giving written notice to the contractor pursuant to NRS 40.645:

18 (a) All notices given by the claimant to the contractor pursuant
19 to NRS 40.600 to 40.695, inclusive, that are related to the residence;

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

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

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

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

40 **Sec. 16.** NRS 113.150 is hereby amended to read as follows:

41 113.150 1. If a seller or the seller's agent fails to serve a
42 completed disclosure form in accordance with the requirements of
43 NRS 113.130, the purchaser may, at any time before the conveyance
44 of the property to the purchaser, rescind the agreement to purchase
45 the property without any penalties.



2. If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.



* S B 4 1 1 *

6. A purchaser of residential property may *not* waive any of his or her rights under this section. ~~[Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.]~~

Sec. 17. NRS 645F.265 is hereby repealed.

Sec. 18. 1. The amendatory provisions of sections 13, 14 and 15 of this act apply to any claim that arises on or after October 1, 2013.

2. Except as otherwise provided in subsection 3, the period of limitations on actions set forth in NRS 11.203, 11.204 and 11.205, as amended by sections 10, 11 and 12 of this act, apply retroactively to actions in which the substantial completion of the improvement to real property occurred before October 1, 2013.

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

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

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

Sec. 19. 1. This section and sections 1, 10 to 15, inclusive, 16 and 18 of this act become effective on October 1, 2013.

2. Sections 2 to 9, inclusive, and 17 of this act become effective on July 1, 2013.

TEXT OF REPEALED SECTION

645F.265 Registration of certain persons and institutions engaged in business of servicing mortgage loans required. A person or institution engaged in the business of servicing mortgage loans that intends to conduct business in this State for the purpose of servicing mortgage loans secured by a lien on real property located in this State shall register with the Commissioner on a form prescribed by the Commissioner. The form must:

1. Identify the state in which the institution is domiciled;
2. Identify the principal place of business of the institution; and
3. Provide such other information as the Commissioner may require.

