

ASSEMBLY BILL NO. 418—COMMITTEE ON JUDICIARY

MARCH 20, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to constructional defects.
(BDR 3-1084)

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; requiring a claimant to record in the office of the county recorder certain information concerning an alleged constructional defect in a residence or appurtenance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, before an owner of a residence or appurtenance or certain other persons may commence a civil action against a contractor, subcontractor, supplier or design professional for certain defects in the residence or appurtenance, the claimant must provide notice of the defect to the contractor. (NRS 40.645) Existing law requires a claimant who is attempting to sell a residence that is or has been the subject of a claim for a constructional defect to disclose, in writing, to a prospective purchaser certain information concerning the defect. (NRS 40.688)

This bill requires a claimant who has given notice of a constructional defect to a contractor to record: (1) a document identifying the property that is the subject of the notice and a copy of the notice; and (2) any modification, amendment or revision to the notice or to the constructional defect claims in the notice or in a complaint alleging a cause of action for the constructional defect. Under this bill, a county recorder may not charge or collect any fees for recording any of these documents. A notice of constructional defect recorded under this bill is deemed to be removed only if a claimant or any other person obtains an inspection by a building inspector employed by a governmental entity and the building inspector, after the inspection, issues a report certifying that the alleged constructional defects do not exist or have been repaired or remedied to comply with the laws and regulations in effect at the time of the inspection. If a claimant commences a civil action alleging a cause of action for a constructional defect without recording a required document, the court must: (a) dismiss the action without prejudice and compel the claimant to record the required documents; or (b) if dismissal of the action would prevent the claimant from filing another action because the action



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24 would be barred by the applicable statute of limitations or statute of repose, stay the
25 proceeding pending recording of the required documents.

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

- 1 **Section 1.** NRS 40.645 is hereby amended to read as follows:
2 40.645 1. Except as otherwise provided in this section and
3 NRS 40.670, before a claimant commences an action or amends a
4 complaint to add a cause of action for a constructional defect against
5 a contractor, subcontractor, supplier or design professional, the
6 claimant:
7 (a) Must give written notice by certified mail, return receipt
8 requested, to the contractor, at the contractor's address listed in the
9 records of the State Contractors' Board or in the records of the
10 office of the county or city clerk or at the contractor's last known
11 address if the contractor's address is not listed in those records; and
12 (b) May give written notice by certified mail, return receipt
13 requested, to any subcontractor, supplier or design professional
14 known to the claimant who may be responsible for the
15 constructional defect, if the claimant knows that the contractor is no
16 longer licensed in this State or that the contractor no longer acts as a
17 contractor in this State.
18 2. The notice given pursuant to subsection 1 must:
19 (a) Include a statement that the notice is being given to satisfy
20 the requirements of this section;
21 (b) Identify in specific detail each defect, damage and injury to
22 each residence or appurtenance that is the subject of the claim,
23 including, without limitation, the exact location of each such defect,
24 damage and injury;
25 (c) Describe in reasonable detail the cause of the defects if the
26 cause is known and the nature and extent that is known of the
27 damage or injury resulting from the defects; and
28 (d) Include a signed statement, by each named owner of a
29 residence or appurtenance in the notice, that each such owner
30 verifies that each such defect, damage and injury specified in the
31 notice exists in the residence or appurtenance owned by him or her.
32 If a notice is sent on behalf of a homeowners' association, the
33 statement required by this paragraph must be signed under penalty
34 of perjury by a member of the executive board or an officer of the
35 homeowners' association.
36 3. A representative of a homeowners' association may send
37 notice pursuant to this section on behalf of an association if the
38 representative is acting within the scope of the representative's
39 duties pursuant to chapter 116 or 117 of NRS.



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1 4. Notice is not required pursuant to this section before
2 commencing an action if:

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

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

10 *5. A claimant who gives notice of a constructional defect*
11 *pursuant to this section shall, not later than 10 calendar days after*
12 *giving such notice, record or cause to be recorded in the office of*
13 *the recorder of the county in which the residence or appurtenance*
14 *that is the subject of the notice is located a document identifying*
15 *the real property upon which the residence or appurtenance that is*
16 *the subject of the notice is located by legal description, assessor's*
17 *parcel number and address, and a true and correct copy of the*
18 *notice given pursuant to this section. The claimant shall record or*
19 *cause to be recorded in the office of the county recorder any*
20 *modification, amendment or revision to the notice given pursuant*
21 *to this section or to a claim for a constructional defect set forth in*
22 *the notice or in a complaint alleging a cause of action for a*
23 *constructional defect not later than 10 calendar days after the*
24 *modification, amendment or revision. If a claimant commences an*
25 *action or amends a complaint to add a cause of action for a*
26 *constructional defect against a contractor, subcontractor, supplier*
27 *or design professional, without complying with this subsection, the*
28 *court must:*

29 (a) *Dismiss the action without prejudice and compel the*
30 *claimant to comply with this subsection before filing another*
31 *action; or*

32 (b) *If dismissal of the action would prevent the claimant from*
33 *filing another action because the action would be procedurally*
34 *barred by the statute of limitations or statute of repose, stay the*
35 *proceeding pending compliance with this subsection by the*
36 *claimant.*

37 6. *A notice of a constructional defect recorded against real*
38 *property pursuant to subsection 5 must remain of record against*
39 *the real property unless the notice is deemed removed from the*
40 *record, and shall be deemed removed from the record only if:*

41 (a) *A claimant or any other person obtains an inspection from*
42 *a building inspector, building official or other similar authority*
43 *employed by a governmental body with jurisdiction; and*

44 (b) *After inspecting the residence or appurtenance, the*
45 *building inspector, building official or other similar authority*



1 *issues a report, record of inspection or other document certifying*
2 *that the alleged constructional defects identified in the notice:*

3 *(1) Do not constitute constructional defects; or*

4 *(2) Have been repaired or otherwise remedied to comply*
5 *with the local codes and ordinances and any other law or*
6 *regulation in effect at the time of the inspection.*

7 *7. Except as otherwise provided in this subsection, upon*
8 *recording of the report, record of inspection or other document*
9 *described in paragraph (b) of subsection 6, a notice recorded*
10 *against real property pursuant to subsection 5 shall be deemed*
11 *removed of record. If the recorded report, record of inspection or*
12 *other document certifies that an alleged constructional defect*
13 *identified in a notice of constructional defect given pursuant to*
14 *this section constitutes a constructional defect or has not been*
15 *repaired or otherwise remedied, the notice pursuant to subsection*
16 *5 shall not be deemed removed of record as to the alleged*
17 *constructional defects certified to constitute constructional defects*
18 *or to not have been repaired or otherwise remedied.*

19 *8. Notwithstanding any other provision of law, a county*
20 *recorder shall not charge or collect any fee for recording any*
21 *document required to be recorded pursuant to this section.*

22 **Sec. 2.** This act does not apply to a civil action for a
23 constructional defect commenced before October 1, 2015.

