

Amendment No. 7

Assembly Amendment to Assembly Bill No. 125	(BDR 3-588)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~fuchsia double strikethrough~~ is new language in the bill proposed to be deleted in this amendment; (6) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



ASSEMBLY BILL NO. 125—COMMITTEE ON JUDICIARY

FEBRUARY 6, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to constructional defects. (BDR 3-588)

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; enacting provisions governing the indemnification of a controlling party by a subcontractor for certain constructional defects; enacting provisions governing wrap-up insurance policies or consolidated insurance programs covering certain claims for constructional defects; authorizing the parties to a claim for a constructional defect to agree to have a judgment entered before the filing of a civil action under certain circumstances; revising the definition of “constructional defect”; revising provisions governing the information required to be provided in a notice of constructional defect; removing provisions authorizing claimants to give notice of common constructional defects in residences or appurtenances; requiring a claimant to pursue a claim under a homeowner’s warranty under certain circumstances; revising provisions governing the damages recovered by a claimant; revising the statutes of repose regarding actions for damages resulting from certain deficiencies in construction; revising provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; prohibiting a homeowners’ association from pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; 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. Not later than 30 days after the date on which the contractor receives the notice, the contractor must forward a copy of the notice to each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice. The subcontractor, supplier or design professional who receives the notice must inspect the alleged constructional defect and may elect to repair the defect. (NRS 40.645, 40.646, 40.647)

Section 2 of this bill establishes the circumstances under which a provision in a residential construction contract requiring a subcontractor to indemnify, defend or otherwise hold harmless a controlling party for the negligence or intentional acts or omissions of the controlling party is void and unenforceable. **Section 2** also enacts provisions governing: (1) when a subcontractor's duty to defend a controlling party arises; (2) the manner in which a controlling party may pursue indemnification from a subcontractor when the controlling party is named as an additional insured in the commercial general liability insurance policy of the subcontractor; and (3) wrap-up insurance policies or consolidated insurance programs that cover two or more contractors or subcontractors who perform work on residential construction for risks associated with the construction.

Existing law establishes a procedure by which the parties in a civil action may agree to have a judgment entered in the action in accordance with the terms and conditions of an offer of judgment. A court is prohibited from awarding costs or attorney's fees to a party who rejects such an offer of judgment and fails to obtain a more favorable judgment at trial. (NRS 17.115; N.R.C.P. 68) **Section 3** of this bill establishes a similar procedure under which a person who has given notice of a constructional defect and a contractor, subcontractor, supplier or design professional who has received such a notice may agree to have a judgment entered before a civil action for the constructional defect is commenced.

Section 6 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 is not completed in a good and workmanlike manner and proximately causes physical damage to the residence or appurtenance.

Section 8 of this bill amends the provision of existing law requiring certain information to be included in a notice of constructional defect to require the notice to: (1) state in specific detail, rather than in reasonable detail, each defect, damage and injury to each residence or appurtenance that is subject to the notice; (2) state the exact location of each defect, damage and injury, rather than describe in reasonable detail the location of the defect; and (3) include a statement signed ~~(under penalty of perjury)~~ by the owner of the residence or appurtenance in the notice that the owner verifies that each defect, damage and injury exists in the residence or appurtenance.

Sections 5, 8-13 and 22 of this bill remove a provision of existing law which authorizes one notice to be sent concerning similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects.

Section 11 of this bill requires a claimant and an expert who provided an opinion concerning an alleged constructional defect, or a representative of the expert who has knowledge of the alleged defect, to: (1) be present when a contractor, subcontractor, supplier or design professional conducts the required inspection of the alleged defect; and (2) identify the exact location of the alleged defect.

Under existing law, if a residence or appurtenance is covered by a homeowner's warranty that is purchased by or on behalf of the claimant, the claimant must diligently pursue a claim under the contract. (NRS 40.650) **Section 14** of this bill: (1) prohibits a claimant from filing a notice of constructional defect or pursuing a claim for a constructional defect unless the claimant has submitted a claim under the homeowner's warranty and the insurer has denied the claim; and (2) provides that a claim for a constructional defect may include only the claims that have been denied under the homeowner's warranty. **Section 14** further provides that statutes of limitation or repose are tolled from the time the claimant submits a claim under the homeowner's warranty until 30 days after the insurer denies the claim, in whole or in part.

Section 15 of this bill removes the provision of existing law that provides that a claimant may recover reasonable attorney's fees as part of the claimant's damages in a cause of action for constructional defects. **Section 15** also provides that certain costs recoverable as damages must have been incurred for constructional defects proven by the claimant.

Existing law provides that the statutes of limitation and repose applicable to a claim for constructional defects are tolled from the time that a claimant gives notice of a claim for constructional defects until 30 days after the mediation required by existing law is concluded or waived. (NRS 40.695) **Section 16** of this bill provides that the period for which the statutes of limitation and repose are tolled may not exceed 1 year. **Section 16** further authorizes a court to extend the tolling period if the claimant demonstrates good cause for such an extension.

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. 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 is: (1) for a known deficiency, 10 years after substantial completion of the improvement; (2) for a latent deficiency, 8 years after substantial completion of the improvement; and (3) for a patent deficiency, 6 years after substantial completion of the improvement. However, if a deficiency was a result of willful misconduct or was fraudulently concealed, an action may be commenced at any time after substantial completion of the improvement. (NRS 11.202-11.205) **Sections 17-19 and 22** of this bill provide that the statute of repose for all actions for damages caused by a deficiency in construction of improvement to real property is 6 years after substantial completion of the improvement. **Sections 17-19 and 22** also eliminate existing provisions of law 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 21** of this bill: (1) provides that the revised statutes of repose set forth in **sections 17-19** apply retroactively under certain circumstances; and (2) establishes a 1-year grace period during which a person may commence an action under the existing statutes of repose, if the action accrued before the effective date of this bill.

Existing law authorizes a homeowners' association to institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. (NRS 116.3102) In *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev. 449 (2009), the Nevada Supreme Court held that existing law grants standing to a homeowners' association to pursue constructional defect claims on behalf of units' owners with respect to constructional defects in individual units. **Sections 5 and 20** of this bill provide that an association may not pursue a constructional defect claim on behalf of itself or units' owners, unless the claim pertains exclusively to the common elements of the association.

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 and 3 of this act.

Sec. 2. *1. In any action or other proceeding involving a constructional defect asserted by a claimant and governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:*

(a) Except as otherwise provided in paragraph (b), any provision in a contract entered into on or after the effective date of this act for residential construction that requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling party from any liability, claim, action or cause of action resulting from a constructional defect caused by the negligence, whether active or passive, or intentional act or omission of the controlling party is against public policy and is void and unenforceable.

(b) Except as otherwise provided in paragraph (c), a provision in a contract entered into on or after the effective date of this act for residential construction is not against public policy and is not void and unenforceable under paragraph (a) to the extent that the provision requires a subcontractor to indemnify, defend or otherwise hold harmless a controlling party from any liability, claim, action or cause of action resulting from a constructional defect arising out of, related to or connected with the subcontractor's scope of work, negligence, or intentional act or omission.

(c) A provision in a contract entered into on or after the effective date of this act for residential construction is against public policy and is void and unenforceable under paragraph (a) to the extent that it requires a subcontractor

1 to defend, indemnify or otherwise hold harmless a controlling party from any
2 liability, claim, action or cause of action resulting from a constructional defect
3 arising out of, related to or connected with that portion of the subcontractor's
4 work which has been altered or modified by another trade or the controlling
5 party.

6 (d) Except as otherwise provided in paragraph (e), if a provision of a
7 contract entered into on or after the effective date of this act for residential
8 construction that requires a subcontractor to indemnify, defend or otherwise hold
9 harmless a controlling party is not against public policy and is not void and
10 unenforceable under this subsection, the duty of the subcontractor to defend the
11 controlling party arises upon presentation of a notice pursuant to subsection 1 of
12 NRS 40.646 containing a particular claim, action or cause of action from which
13 it can be reasonably inferred that an alleged constructional defect was caused by
14 or attributable to the subcontractor's work, negligence, or wrongful act or
15 omission.

16 (e) If a controlling party gives a notice to a subcontractor pursuant to NRS
17 40.646 that contains a claim, action or cause of action from which it can be
18 reasonably inferred that an alleged constructional defect was caused by or
19 attributable to the subcontractor's work, negligence, or wrongful act or omission,
20 the claim, action or cause of action is covered by the subcontractor's commercial
21 general liability policy of insurance issued by an insurer, and the controlling
22 party is named as an additional insured under that policy of insurance:

23 (1) The controlling party, as an additional insured, must pursue available
24 means of recovery of its defense fees and costs under the policy before the
25 controlling party is entitled to pursue a claim against the subcontractor.

26 (2) Upon the final settlement of or issuance of a final judgment in an
27 action involving a claim for a constructional defect, if the insurer has not
28 assumed the controlling party's defense and reimbursed the controlling party for
29 the defense obligation of the subcontractor, or if the defense obligation is not
30 otherwise resolved by the settlement or final judgment, the controlling party has
31 the right to pursue a claim against the subcontractor for reimbursement of that
32 portion of the attorney's fees and costs incurred by the controlling party which
33 are attributable to the claims, actions or causes of action arising out of, related to
34 or connected with the subcontractor's scope of work, negligence, or intentional
35 act or omission.

36 (3) The provisions of subparagraphs (1) and (2) do not prohibit a
37 controlling party from:

38 (I) Following the requirements of NRS 40.600 to 40.695, inclusive,
39 and sections 2 and 3 of this act relating to providing notice of an alleged
40 constructional defect or any other procedures set forth in those provisions; or

41 (II) Filing a third-party complaint against the subcontractor if a
42 claimant commences an action or amends a complaint to add a cause of action
43 for a constructional defect against a controlling party which arises out of, relates
44 to or is otherwise connected with the subcontractor's scope of work, negligence,
45 or wrongful act or omission.

46 2. For any wrap-up insurance policy or other consolidated insurance
47 program that covers a subcontractor who performs work on residential
48 construction for which a contract is entered into on or after the effective date of
49 this act, for claims, actions or causes of action for a constructional defect
50 governed by NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act:

51 (a) The controlling party obtaining the wrap-up insurance policy or other
52 consolidated insurance program shall disclose the total amount or method of
53 calculation of any credit or compensation for the premium required from a

1 subcontractor or other participant for that wrap-up insurance policy in the
2 contract documents.

3 (b) Except as otherwise provided in paragraph (c), the contract documents
4 must disclose, if and to the extent known:

5 (1) The policy limits;

6 (2) The scope of policy coverage;

7 (3) The policy term;

8 (4) The basis upon which the deductible or occurrence is triggered by the
9 insurer;

10 (5) If the policy covers more than one work of improvement, the number
11 of units, if any, indicated on the application for the insurance policy; and

12 (6) A good faith estimate of the amount of available limits remaining
13 under the policy as of a date indicated in the disclosure obtained from the
14 insurer.

15 (c) The disclosure requirements of subparagraphs (1) to (4), inclusive, of
16 paragraph (b) may be satisfied by providing the participant with a copy of the
17 binder or declaration.

18 (d) The disclosures made pursuant to subparagraphs (5) and (6) of
19 paragraph (b):

20 (1) May be based upon information available at the time the disclosure is
21 made and are not inaccurate or made in bad faith solely because the disclosures
22 do not accurately reflect the actual number of units covered by the policy or the
23 amount of insurance available, if any, when a later claim is made.

24 (2) Are presumptively made in good faith if:

25 (I) The disclosure pursuant to subparagraph (5) of paragraph (b) is
26 the same as that contained in the application to the wrap-up insurance policy
27 insurer; and

28 (II) The disclosure pursuant to subparagraph (6) of paragraph (b)
29 was obtained from the wrap-up insurance policy insurer or broker.

30 ➤ The presumptions stated in subparagraph (2) may be overcome only by a
31 showing that the insurer, broker or controlling party intentionally misrepresented
32 the facts identified in subparagraph (5) or (6) of paragraph (b).

33 (e) Upon the written request of any participant in the wrap-up insurance
34 policy or consolidated insurance program, a copy of the insurance policy must be
35 provided, if available, that shows the coverage terms and items in subparagraphs
36 (1) to (5), inclusive, of paragraph (b). If the policy is not available at the time of
37 the request, a copy of the insurance binder or declaration of coverage may be
38 provided in lieu of the actual policy.

39 (f) Any party receiving a copy of the policy, binder or declaration shall not
40 disclose it to third parties other than the participant's insurance broker or
41 attorney unless required to do so by law. The participant's insurance broker or
42 attorney may not disclose the policy, binder or declaration to any third party
43 unless required to do so by law.

44 (g) If the controlling party obtaining the wrap-up insurance policy or other
45 consolidated insurance program does not disclose the total amount or method of
46 calculation of the premium credit or compensation to be charged to the
47 participant before the time the participant submits its bid, the participant is not
48 legally bound by the bid unless that participant has the right to increase the bid
49 up to the amount equal to the difference between the amount the participant
50 included, if any, for insurance in the original bid and the amount of the actual
51 bid credit required by the controlling party obtaining the wrap-up insurance
52 policy or other consolidated insurance program. This paragraph does not apply if
53 the controlling party obtaining the wrap-up insurance policy or other

1 consolidated insurance program did not require the subcontractor to offset the
2 original bid amount with a deduction for the wrap-up insurance policy or
3 program.

4 (h) The subcontractor's monetary obligation for enrollment in the wrap-up
5 insurance policy or consolidated insurance program ceases upon the
6 subcontractor's satisfaction of its agreed contribution percentage, which may
7 have been paid either as a lump sum or on a pro rata basis throughout the
8 subcontractor's performance of the work.

9 (i) In the event of an occurrence, the dollar amount required to be paid by a
10 subcontractor as a self-insured retention or deductible must not be greater than
11 the amount that the subcontractor would have otherwise been required to pay as
12 a self-insured retention or deductible under a commercial general liability policy
13 of comparable insurance in force during the relevant period for that particular
14 subcontractor and within the specific market at the time the subcontract is
15 entered into.

16 3. As used in this section:

17 (a) "Controlling party" means a person who owns real property involved in
18 residential construction, a contractor or any other person who is to be
19 indemnified by a provision in a contract entered into on or after the effective date
20 of this act for residential construction.

21 (b) "Residential construction" means the construction of a new residence, of
22 an alteration of or addition to an existing residence, or of an appurtenance.

23 (c) "Wrap-up insurance policy" is an insurance policy, or series of policies,
24 written to cover risks associated with the construction, repair or landscaping of a
25 new residence, of an alteration of or addition to an existing residence, or of an
26 appurtenance, and covering two or more of the contractors or subcontractors that
27 work on that construction, repair or landscaping.

28 Sec. 3. 1. At any time after a claimant has given notice pursuant to NRS
29 40.645 and before the claimant commences an action or amends a complaint to
30 add a cause of action for a constructional defect against a contractor,
31 subcontractor, supplier or design professional, the claimant or any contractor,
32 subcontractor, supplier or design professional who has received notice pursuant
33 to NRS 40.645 or 40.646 may serve upon one or more other parties a written offer
34 to allow judgment to be entered without action in accordance with the terms and
35 conditions of the offer of judgment.

36 2. Except as otherwise provided in subsection 7, if, within 10 days after the
37 date of service of an offer of judgment, the party to whom the offer was made
38 serves written notice that the offer is accepted, the party who made the offer or
39 the party who accepted the offer may file the offer, the notice of acceptance and
40 proof of service with the clerk of the district court. Upon receipt by the clerk, the
41 clerk shall enter a judgment according to the terms of the offer. Any judgment
42 entered pursuant to this section shall be deemed a compromise settlement. The
43 judgment, the offer, the notice of acceptance and proof of service, with the
44 judgment endorsed, become the judgment roll.

45 3. If the offer of judgment is not accepted pursuant to subsection 2 within
46 10 days after the date of service, the offer shall be deemed rejected by the party to
47 whom it was made and withdrawn by the party who made it. The rejection of an
48 offer does not preclude any party from making another offer pursuant to this
49 section. Evidence of a rejected offer is not admissible in any proceeding other
50 than a proceeding to determine costs and fees.

51 4. Except as otherwise provided in this section, if a party who rejects an
52 offer of judgment fails to obtain a more favorable judgment in an action for a
53 constructional defect, the court:

(a) May not award to the party any costs or attorney's fees;
(b) May not award to the party any interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment;

(c) Shall order the party to pay the taxable costs incurred by the party who made the offer; and

(d) May order the party to pay to the party who made the offer any or all of the following:

(1) A reasonable sum to cover any costs incurred by the party who made the offer for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case.

(2) Any applicable interest on the judgment for the period from the date of service of the offer to the date of entry of the judgment.

(3) Reasonable attorney's fees incurred by the party who made the offer for the period from the date of service of the offer to the date of entry of the judgment. If the attorney of the party who made the offer is collecting a contingent fee, the amount of any attorney's fees awarded to the party pursuant to this subparagraph must be deducted from that contingent fee.

5. To determine whether a party who rejected an offer of judgment failed to obtain a more favorable judgment:

(a) If the offer provided that the court would award costs, the court must compare the amount of the offer with the principal amount of the judgment, without inclusion of costs.

(b) If the offer precluded a separate award of costs, the court must compare the amount of the offer with the sum of:

(1) The principal amount of the judgment; and

(2) The amount of taxable costs that the claimant who obtained the judgment incurred before the date of service of the offer.

6. Multiple parties may make a joint offer of judgment pursuant to this section.

7. A party may make to two or more other parties pursuant to this section an apportioned offer of judgment that is conditioned upon acceptance by all the parties to whom the apportioned offer is made. Each party to whom such an offer is made may serve upon the party who made the offer a separate written notice of acceptance of the offer. If any party rejects the apportioned offer:

(a) The action must proceed as to all parties to whom the apportioned offer was made, whether or not the other parties accepted or rejected the offer; and

(b) The sanctions set forth in subsection 4:

(1) Apply to each party who rejected the apportioned offer.

(2) Do not apply to any party who accepted the apportioned offer.

8. The sanctions set forth in subsection 4 do not apply to:

(a) An offer of judgment made to multiple parties who received a notice pursuant to NRS 40.645 or 40.646 unless the same person is authorized to decide whether to settle the claims against all the parties to whom the offer is made and:

(1) There is a single common theory of liability against all the parties to whom the offer is made;

(2) The liability of one or more of the parties to whom the offer is made is entirely derivative of the liability of the remaining parties to whom the offer is made; or

(3) The liability of all the parties to whom the offer is made is entirely derivative of a common act or omission by another person.

(b) An offer of judgment made to multiple claimants unless the same person is authorized to decide whether to settle the claims of all the claimants to whom the offer is made and:

(1) There is a single common theory of liability claimed by all the claimants to whom the offer is made;

(2) The damages claimed by one or more of the claimants to whom the offer is made are entirely derivative of an injury to the remaining claimants to whom the offer is made; or

(3) The damages claimed by all the claimants to whom the offer is made are entirely derivative of an injury to another person.

Sec. 4. 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 and 3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 40.603 to 40.634, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 40.610 is hereby amended to read as follows:

40.610 "Claimant" means:

1. An owner of a residence or appurtenance; *or*

2. A representative of a homeowners' association ~~that is responsible for a residence or appurtenance and is~~ acting within the scope of the representative's 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. 6. 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:

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

~~2. Which† presents an unreasonable risk of injury to a person or property;~~
or

2. Which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed. †;

~~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. 7. NRS 40.635 is hereby amended to read as follows:

40.635 NRS 40.600 to 40.695, inclusive ~~†~~, *and sections 2 and 3 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. 8. NRS 40.645 is hereby amended to read as follows:

40.645 1. Except as otherwise provided in this section and NRS 40.670, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant:

(a) Must give written notice by certified mail, return receipt requested, to the contractor, at the contractor's 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 the contractor's 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 the contractor 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~~ *Identify in specific detail each defect, damage and injury* to each residence or appurtenance that is the subject of the claim ~~and~~, *including, without limitation, the exact location of each such defect, damage and injury;*

(c) Describe in reasonable detail the cause of the defects if the cause is known ~~and~~ 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 included in the 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.; and~~

(d) Include a signed statement, signed under penalty of perjury by each named owner of a residence or appurtenance in the notice, that each such owner verifies that each such defect, damage and injury specified in the notice exists in the residence or appurtenance owned by him or her. If a notice is sent on behalf of a homeowners' association, the statement required by this paragraph must be signed under penalty of perjury by a member of the executive board or an officer of the homeowners' association.

3. A representative of a homeowners' 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 the representative's duties pursuant to chapter 116 or 117 of NRS.

~~6.~~ 4. 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. 9. NRS 40.646 is hereby amended to read as follows:

40.646 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, the contractor was unable to identify the subcontractor, supplier or design professional whom the contractor believes is responsible for the defect within the time provided pursuant to subsection 1.

3. ~~If the 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, the contractor was unable to identify the subcontractor, supplier or design professional whom the contractor believes is responsible for the defect within the time provided pursuant to subsection 1.~~ **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~~ NRS 40.6462 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 NRS 40.6452:~~

~~—(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 NRS 40.6462 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.~~

1 **Sec. 10.** NRS 40.6462 is hereby amended to read as follows:

2 40.6462 ~~1. Except as otherwise provided in subsection 2, after~~ *After*
3 notice of a constructional defect is given to a contractor pursuant to NRS 40.645,
4 the claimant shall, upon reasonable notice, allow the contractor and each
5 subcontractor, supplier or design professional who may be responsible for the
6 alleged defect reasonable access to the residence or appurtenance that is the subject
7 of the notice to determine the nature and extent of a constructional defect and the
8 nature and extent of repairs that may be necessary. To the extent possible, the
9 persons entitled to inspect shall coordinate and conduct the inspections in a manner
10 which minimizes the inconvenience to the claimant.

11 ~~12 If notice is given to the contractor pursuant to subsection 4 of NRS~~
12 ~~40.645, the contractor and each subcontractor, supplier or design professional who~~
13 ~~may be responsible for the defect do not have the right to inspect the residence or~~
14 ~~appurtenance of an owner who is not named in the notice unless the owner requests~~
15 ~~the inspection in the manner set forth in NRS 40.6452. If the owner does not~~
16 ~~request the inspection, the owner shall be deemed not to have provided notice~~
17 ~~pursuant to NRS 40.645.~~

18 **Sec. 11.** NRS 40.647 is hereby amended to read as follows:

19 40.647 1. ~~Except as otherwise provided in NRS 40.6452, after~~ *After* notice
20 of a constructional defect is given pursuant to NRS 40.645, before a claimant may
21 commence an action or amend a complaint to add a cause of action for a
22 constructional defect against a contractor, subcontractor, supplier or design
23 professional, the claimant must:

24 (a) Allow an inspection of the alleged constructional defect to be conducted
25 pursuant to NRS 40.6462; ~~and~~

26 (b) *Be present at an inspection conducted pursuant to NRS 40.6462 and*
27 *identify the exact location of each alleged constructional defect specified in the*
28 *notice and, if the notice includes an expert opinion concerning the alleged*
29 *constructional defect, the expert, or a representative of the expert who has*
30 *knowledge of the alleged constructional defect, must also be present at the*
31 *inspection and identify the exact location of each alleged constructional defect*
32 *for which the expert provided an opinion; and*

33 (c) Allow the contractor, subcontractor, supplier or design professional a
34 reasonable opportunity to repair the constructional defect or cause the defect to be
35 repaired if an election to repair is made pursuant to NRS 40.6472.

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

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

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

44 **Sec. 12.** NRS 40.6472 is hereby amended to read as follows:

45 40.6472 1. Except as otherwise provided in NRS ~~40.6452,~~ 40.670 and
46 40.672, a written response must be sent by certified mail, return receipt requested,
47 to a claimant who gives notice of a constructional defect pursuant to NRS 40.645:

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

50 (b) If notice was sent to a subcontractor, supplier or design professional, by the
51 subcontractor, supplier or design professional not later than 90 days after the date
52 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 the claimant's 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. 13. NRS 40.648 is hereby amended to read as follows:

40.648 1. If the response provided pursuant to NRS 40.6472 includes an election to repair the constructional defect:

(a) The repairs may be performed by the contractor, subcontractor, supplier or design professional, if such person is properly licensed, bonded and insured to perform the repairs and, if such person 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 NRS 40.6452.~~

~~(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) (b) 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 NRS 40.6472 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. 14. 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 pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, *and sections 2 and 3 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 NRS 40.6472;

(b) Make an offer of settlement;

(c) Make a good faith response to the claim asserting no liability;

(d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; 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 and 3 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 *H, and sections 2 and 3 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 ~~1; a claimant shall diligently pursue a claim under the contract.1 :~~

(a) A claimant may not send a notice pursuant to NRS 40.645 or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act unless the claimant has first submitted a claim under the homeowner's warranty and the insurer has denied the claim.

(b) A claimant may include in a notice given pursuant to NRS 40.645 only claims for the constructional defects that were denied by the insurer.

(c) 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.

(d) 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 and 3 of this act are tolled from the time notice of the claim under the homeowner's warranty is submitted to the insurer until 30 days after the insurer rejects the claim, in whole or in part, in writing.

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 ~~1; if the offer of judgment includes all damages to which the claimant is entitled pursuant to NRS 40.655.1 or section 3 of this act.~~

Sec. 15. 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 and 3 of this act*, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

~~(a) 1Any reasonable attorney's fees;~~

~~—(b)1~~ 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;

~~1(e)1~~ (b) The reduction in market value of the residence or accessory structure, if any, to the extent the reduction is because of structural failure;

~~1(d)1~~ (c) The loss of the use of all or any part of the residence;

~~1(e)1~~ (d) The reasonable value of any other property damaged by the constructional defect;

~~1(f)1~~ (e) Any additional costs reasonably incurred by the claimant ~~1; 1~~ *for constructional defects proven 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

~~1(g)1~~ (f) Any interest provided by statute.

2. ~~1The 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, *and sections 2 and 3 of this act*, the claimant may not recover from the contractor, as a result of the constructional defect, ~~1anything1~~ *any damages* other

than ~~that which is provided~~ damages authorized pursuant to NRS 40.600 to 40.695, inclusive ~~;~~
~~4~~ **, and sections 2 and 3 of this act.**

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

~~5~~ **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. 16. NRS 40.695 is hereby amended to read as follows:

40.695 1. Except as otherwise provided in ~~subsection~~ **subsections 2** ~~and 3~~, 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 and 3 of this act** are tolled from the time notice of the claim is given, until ~~30~~ **the earlier of:**

(a) One year after notice of the claim is given; or

(b) Thirty days after mediation is concluded or waived in writing pursuant to NRS 40.680.

2. Statutes of limitation and repose may be tolled under this section for a period longer than 1 year after notice of the claim is given only if, in an action for a constructional defect brought by a claimant after the applicable statute of limitation or repose has expired, the claimant demonstrates to the satisfaction of the court that good cause exists to toll the statutes of limitation and repose under this section for a longer period.

3. Tolling under this section applies to a third party regardless of whether the party is required to appear in the proceeding.

Sec. 17. NRS 11.202 is hereby amended to read as follows:

11.202 1. ~~Any~~ **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 ~~at any time~~ **more than 6 years** after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or the construction of such an improvement ; ~~which is the result of his or her willful misconduct or which he or she fraudulently concealed;~~

(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. The provisions of this section do not apply ~~to~~ :

(a) To a claim for indemnity or contribution.

(b) In an action brought against:

~~(a)~~ **(1)** The owner or keeper of any hotel, inn, motel, motor court, boardinghouse or lodging house in this State on account of his or her liability as an innkeeper.

~~(b)~~ **(2)** Any person on account of a defect in a product.

Sec. 18. NRS 11.2055 is hereby amended to read as follows:

11.2055 1. Except as otherwise provided in subsection 2, for the purposes of **this section and** NRS 11.202 ~~, **to 11.206, inclusive,**~~ the date of substantial completion of an improvement to real property shall be deemed to be the date on which:

(a) The final building inspection of the improvement is conducted;

(b) A notice of completion is issued for the improvement; or

(c) A certificate of occupancy is issued for the improvement,

whichever occurs later.

2. If none of the events described in subsection 1 occurs, the date of substantial completion of an improvement to real property must be determined by the rules of the common law.

Sec. 19. NRS 113.135 is hereby amended to read as follows:

113.135 1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 ~~to 11.206, inclusive,~~ **11.2055** and 40.600 to 40.695, inclusive ~~;~~ **, and sections 2 and 3 of this act;**

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his or her right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

Sec. 20. NRS 116.3102 is hereby amended to read as follows:

116.3102 1. Except as otherwise provided in this chapter, and subject to the provisions of the declaration, the association:

(a) Shall adopt and, except as otherwise provided in the bylaws, may amend bylaws and may adopt and amend rules and regulations.

(b) Shall adopt and may amend budgets in accordance with the requirements set forth in NRS 116.31151, may collect assessments for common expenses from the units' owners and may invest funds of the association in accordance with the requirements set forth in NRS 116.311395.

(c) May hire and discharge managing agents and other employees, agents and independent contractors.

(d) May institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or two or more units' owners on matters affecting the common-interest community. ***The association may not institute, defend or intervene in litigation or in arbitration, mediation or administrative proceedings in its own name on behalf of itself or units' owners with respect to an action for a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act unless the action pertains exclusively to common elements.***

(e) May make contracts and incur liabilities. Any contract between the association and a private entity for the furnishing of goods or services must not include a provision granting the private entity the right of first refusal with respect to extension or renewal of the contract.

(f) May regulate the use, maintenance, repair, replacement and modification of common elements.

(g) May cause additional improvements to be made as a part of the common elements.

(h) May acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property, but:

(1) Common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to NRS 116.3112; and

(2) Part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to NRS 116.3112.

(i) May grant easements, leases, licenses and concessions through or over the common elements.

(j) May impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) May impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) May impose construction penalties when authorized pursuant to NRS 116.310305.

(m) May impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) May impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(o) May provide for the indemnification of its officers and executive board and maintain directors and officers liability insurance.

(p) May assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the declaration expressly so provides.

(q) May exercise any other powers conferred by the declaration or bylaws.

(r) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association.

(s) May direct the removal of vehicles improperly parked on property owned or leased by the association, as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or other thoroughfare within the common-interest community in violation of the governing documents. In addition to complying with the requirements of NRS 487.038 and any requirements in the governing documents, if a vehicle is improperly parked as described in this paragraph, the association must post written notice in a conspicuous place on the vehicle or provide oral or written notice to the owner or operator of the vehicle at least 48 hours before the association may direct the removal of the vehicle, unless the vehicle:

(1) Is blocking a fire hydrant, fire lane or parking space designated for the handicapped; or

(2) Poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community.

(t) May exercise any other powers necessary and proper for the governance and operation of the association.

2. The declaration may not limit the power of the association to deal with the declarant if the limit is more restrictive than the limit imposed on the power of the association to deal with other persons.

3. The executive board may determine whether to take enforcement action by exercising the association's power to impose sanctions or commence an action for a violation of the declaration, bylaws or rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The executive

board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(a) The association's legal position does not justify taking any or further enforcement action;

(b) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law;

(c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(d) It is not in the association's best interests to pursue an enforcement action.

4. The executive board's decision under subsection 3 not to pursue enforcement under one set of circumstances does not prevent the executive board from taking enforcement action under another set of circumstances, but the executive board may not be arbitrary or capricious in taking enforcement action.

5. Notwithstanding any provision of this chapter or the governing documents to the contrary, an association may not impose any assessment pursuant to this chapter or the governing documents on the owner of any property in the common-interest community that is exempt from taxation pursuant to NRS 361.125. For the purposes of this subsection, "assessment" does not include any charge for any utility services, including, without limitation, telecommunications, broadband communications, cable television, electricity, natural gas, sewer services, garbage collection, water or for any other service which is delivered to and used or consumed directly by the property in the common-interest community that is exempt from taxation pursuant to NRS 361.125.

Sec. 21. 1. Section 2 of this act applies only to residential construction for which a contract is entered into on or after the effective date of this act.

2. The provisions of NRS 40.615 and 40.655, as amended by sections 6 and 15 of this act, apply to any claim that arises on or after the effective date of this act.

3. The provisions of NRS 40.645, 40.650 and 40.695, as amended by sections 8, 14 and 16 of this act, apply to a notice of a constructional defect given on or after the effective date of this act.

4. The provisions of NRS 40.647, as amended by section 11 of this act, apply only to an inspection conducted pursuant to NRS 40.6462, as amended by section 10 of this act, on or after the effective date of this act.

5. Except as otherwise provided in subsection 6, the period of limitations on actions set forth in NRS 11.202, as amended by section 17 of this act, applies retroactively to actions in which the substantial completion of the improvement to the real property occurred before the effective date of this act.

6. The provisions of subsection 5 do not limit an action:

(a) That accrued before the effective date of this act, and was commenced within 1 year after the effective date of this act; or

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

7. The provisions of NRS 116.3102, as amended by section 20 of this act, do not apply if a unit-owners' association has given notice of a constructional defect pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3 of this act on or before the effective date of this act.

8. As used in this section:

(a) "Residential construction" means the construction of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance.

(b) "Unit-owners' association" has the meaning ascribed to it in NRS 116.011.

1 **Sec. 22.** NRS 11.203, 11.204, 11.205, 11.206 and 40.6452 are hereby
2 repealed.

3 **Sec. 23.** This act becomes effective upon passage and approval.

LEADLINES OF REPEALED SECTIONS

11.203 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Known deficiencies.

11.204 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Latent deficiencies.

11.205 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Patent deficiencies.

11.206 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Limitation of actions not a defense in actions based on liability as innkeeper or for defect in product.

40.6452 Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners.