MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Eightieth Session
April 9, 2019

The Committee on Judiciary was called to order by Chairman Steve Yeager at 8:05 a.m. on Tuesday, April 9, 2019, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblywoman Lesley E. Cohen, Vice Chairwoman
Assemblywoman Shea Backus
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblyman Ozzie Fumo
Assemblywoman Alexis Hansen
Assemblywoman Lisa Krasner
Assemblywoman Brittney Miller
Assemblywoman Rochelle T. Nguyen
Assemblywoman Sarah Peters
Assemblyman Tom Roberts
Assemblywoman Jill Tolles
Assemblywoman Selena Torres
Assemblyman Howard Watts

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Karyn Werner, Committee Secretary
Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Ardea G. Canepa-Rotoli, Attorney, representing Nevada Justice Association
Eva G. Segerblom, Attorney, representing Nevada Justice Association
Kelly Cruz, Private Citizen, Sun Valley, Nevada
Edred T. Marsh, Principal Engineer, American Geotechnical, Inc., Las Vegas, Nevada
Colton Carmine, Private Citizen, Reno, Nevada
Bruce K. MacKinnon, Private Citizen, Reno, Nevada
Joshua J. Hicks, representing Nevada Home Builders Association
Brian Gordon, Principal, Applied Analysis, Las Vegas, Nevada
David Goldwater, representing Nevada Home Builders Association
Nat Hodgson, Chief Executive Officer, Southern Nevada Home Builders Association
Janet Love, President, Southern Nevada Home Builders Association; and President, Story Book Homes, Las Vegas, Nevada
Jim Rampa, Director, Customer Service, Pardee Homes, Las Vegas, Nevada
Josh Griffin, representing Nevada Subcontractors Association
Kelly Gaines, President, Nevada Subcontractors Association
Wendy Caraveo, Director of Estimating, Colvin Construction, LLC, Las Vegas, Nevada
Tom Burns, Chair-Elect, Las Vegas Metro Chamber of Commerce; and Board Member, Nevada Independent Insurance Agents
Jake Lasike, Fleet Manager, Hirschi Masonry, Las Vegas, Nevada
Andrea Gould, Manager, Focus Companies, Las Vegas, Nevada
Jesse Haw, President, Hawco Properties, Reno, Nevada
Victor Rameker, Owner, Desert Wind Homes, Reno, Nevada
Teresa N. DiLoreto, Partner, Paradiso Communities, Reno, Nevada
Rebecca Fountain, Member, Latin Chamber of Commerce; and Owner, Core Building Group, Las Vegas, Nevada
Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce
Carlos Gomez, Director, Business Development and Membership, Latin Chamber of Commerce, Las Vegas, Nevada
Aaron West, Chief Executive Officer, Nevada Builders Alliance
Chris Barrett, Vice President, Q&D Construction; and President, Nevada Builders Alliance

Mark Turner, Board Vice President, Nevada Builders Alliance
Gennady Stolyarov II, Lead Actuary, Property and Casualty, Division of Insurance, Department of Business and Industry
Margi Grein, Executive Officer, Nevada State Contractors' Board

Chairman Yeager:
[Roll was called. Committee protocol and rules were explained.] We will move to our agenda, and we only have one bill on the agenda. I will open Assembly Bill 421. We will bring up those who will be presenting the bill. Before we get started, I want to give you the lay of the land about how the hearing this morning will proceed. The presentation, as well as questions and support testimony, will get about 1 hour and 15 minutes. The opposition will also have 1 hour and 15 minutes. I have been provided with a list of 20 people in opposition that I will call up, in both Las Vegas and Carson City. I will give the first couple of people in opposition a little extra time to present the opposition and take questions. Everyone after that will be limited to two minutes. I will time you and let you know when your time is up. I will then ask you to wrap it up. I am not sure how many of you want to testify, but my best guess is that we will probably not have enough time for everyone to testify. When we get to the end of the 1 hour and 15 minutes, I will ask those who wanted to testify to stand up and be recognized. Also, keep in mind that signing in on the sign-in sheet and noting your opposition is made part of the record of the hearing. You are also welcome to send emails. After that, we will have 15 minutes for neutral testimony, and yes, there is neutral testimony. We will then give the presenters time for some brief closing remarks. That will take us to about 11 a.m. I would like to spend more time on this bill, but given where we are in the session, it will not be possible to spend more than three hours on this bill this morning.

At some point, I will step out to present a bill in the Assembly Committee on Government Affairs. I hope I am not gone too long, but Vice Chairwoman Cohen will take over the meeting during that time period. With all of that being said, let us open the hearing on Assembly Bill 421.

Assembly Bill 421: Revises provisions relating to construction. (BDR 3-841)

Ardea G. Canepa-Rotoli, Attorney, representing Nevada Justice Association:
I am here on behalf of the Nevada Justice Association. I want to start out by going through a very brief history of Nevada's construction defect law (Exhibit C). It was initially enacted in 1995 in response to a number of homeowner complaints and ensuing construction defect litigation. What I think is important to note is that this law, back in 1995, was actually a compromise between the builders and homeowners' representatives. Homeowners actually gave up the right to pursue punitive damages and any kind of emotional distress damages in exchange for the ability to seek recovery of expert fees, litigation costs, and attorney's fees so they could be made whole and they would be able to repair their homes.

The law was actually a good thing for both the homeowners and contractors because it created a right-to-repair process. It also created a pre-litigation process that was a reasonable process to go through to try to prevent lawsuits from being filed. The overall intent of the

law was to give the builders the right to repair things before the need to have a lawsuit filed. In the cases where a lawsuit was necessary, it created the avenue for a homeowner with legitimate construction defect claims to be able to be made whole.

The statute was amended a number of times thereafter on a consensual and bipartisan basis until 2015. In 2015, some very extreme and unfair changes were made without any input from consumer advocates. In fact, it was pushed through so fast that homeowners were not given the opportunity to voice their concerns about a bill that would ultimately strip them of their rights.

With that said, there were some things that were done in 2015 that were agreeable. I want to make it clear that, despite what you may hear today, Assembly Bill 421 is not seeking a full repeal of Assembly Bill 125 of the 78th Session. It is absolutely not a full repeal. I will give you a few examples. There were some changes made regarding indemnification to put some protections in place for subcontractors. Assembly Bill 421 does not seek to get rid of those. There were some changes made to have homeowners review their *Nevada Revised Statutes* (NRS) Chapter 40 notices and to make a statement that they are aware of the issues listed in those Chapter 40 notices. There is nothing wrong with that. Homeowners should know what is in their Chapter 40 notices. Assembly Bill 421 does not seek to repeal that. Assembly Bill 421 does nothing to take away the builder's right to repair despite what you may hear today. The right-to-repair process is important for builders and for homeowners. Homeowners will still have to give a Chapter 40 notice. The builder will still have 90 days to do an investigation of the property and will still have the right to repair. There is still the requirement of mediation or waiver of the mediation by the builder before a lawsuit can be filed. Assembly Bill 421 does not seek to change that. The pre-litigation process, the right to repair process, is still in place.

I want to make this clear. We have heard rumors that Assembly Bill 421 is a full repeal of what was done in 2015, and that is not what Assembly Bill 421 seeks to do. What it is seeking to do is to restore Nevada's construction defect law to a position where homeowners with legitimate construction defect claims can bring a claim within a reasonable amount of time to be made whole, so they have enough money to actually make the repairs on their homes and to sell those homes if they want to at a fair-market price. Unfortunately, the current state of the law does not allow for any of that.

At this time, I would like to go through the proposed revisions in Assembly Bill 421. The first is in section 1, which actually seeks to restore the definition of "construction defect" back to include violations of local codes and ordinances, and to also include any work which is not done in a good and workmanlike manner in accordance with industry standards. I think it is important to understand that, in the current state of the law, a contractor can actually violate a building code or ordinance and, until or if that violation results in personal injury or damage to property, it is not considered a defect. I will give you an example. We could have a well-known electrical code violation and until or if that electrical code violation results in a fire harming a person or property, it may not be considered a defect. That is morally repugnant. It does not make sense. You can have criminal charges under

criminal law for a violation of codes or ordinances, but under our current civil law there is no recourse for homeowners for the same type of violation. Building codes are minimum standards put in place to protect consumers, but, unfortunately, under our current construction defect laws, there is no civil recourse for these types of violations. Section 1 seeks to change that.

Moving on to section 2, it seeks to restore the Chapter 40 requirements so that homeowners can go through the Chapter 40 pre-litigation process without having to incur expensive expert fees. The pre-litigation process was put in place to allow homeowners and builders to work together in a right-to-repair without the need for lawsuits or attorneys. With the specificity requirements, homeowners are having to hire experts on the onset and are incurring expensive expert fees during the pre-litigation process, which makes it worthless. We are seeking Assembly Bill 421 to change the language back to specify reasonable detail of the defects, damages, or injuries. We have had contractors reject defect notices with a description that says "cracking in northeast corner of living room." Homeowners do not know what is causing the cracking; they are not experts. They do not know what the actual underlying defect is. What they do know is that they are seeing cracks in their drywall. Under the current law, we are being challenged and being told that it is not specific enough. Assembly Bill 421 seeks to bring it back to where homeowners can reasonably identify what issues they are seeing without having to get experts involved and having to incur those expert fees so the right-to-repair process can work.

I want to note that section 2, subsection 2, paragraph (d) in the bill was stricken in error. We are absolutely in support of keeping the homeowner and homeowners' association representatives signing the statement that they have seen the Chapter 40 notice and that they are aware of what is in the notice. That makes sense. Chapter 40 notices should not be going out on behalf of homeowners and homeowners' association representatives without them knowing what is in it. We are not seeking to strike that; it was done in error.

Chairman Yeager:
I have a question for the record. Are you referring to paragraph (d) on page 4 of the bill? Is that what you are talking about that was stricken in error?

Ardea Canepa-Rotoli:
Yes, that is correct. It is paragraph (d).

Chairman Yeager:
So that the record is clear, are you intending to restore the entirety of paragraph (d), or only a part of it?

Ardea Canepa-Rotoli:
The entirety of paragraph (d) that is stricken, where it starts "Include a signed statement" and ends with "an officer of the homeowners' association." It was stricken in error.

Section 3 ties into what I just discussed about expert fees and the specificity requirement. Assembly Bill 421 seeks to remove some very expensive requirements in the pre-litigation process related to the inspection. The notice goes out, and the builder has the right to inspect. The current law requires that a homeowner and an expert be present during this inspection. Homeowners are having to take time off of work, losing income that they can never recover as part of damages, and to hire experts to be present at these inspections. They are incurring expert fees and hindering the pre-litigation process. Now, if a builder wants to come back in and offer a repair, homeowners have already incurred expert fees for having experts at the inspection. Once again, sections 2 and 3 are trying to get back to the homeowner having the ability to do this pre-litigation process. We understand that the litigation process, if it gets to that point, is very expert-driven and expensive. The intent of the pre-litigation process was for homeowners and builders to be able to work together and to have a right to repair. Unfortunately, with the specificity and having to have experts, it is too costly to have it work.

Regarding section 4, in 2015 some changes were made so that, to even get to the point of doing a Chapter 40 notice, homeowners have to jump through a number of hoops. One example is that they have to exhaust any and all warranties available to them which, on the face, does not sound bad. However, when you get into it, homeowners have to tender warranties when they know the claims will be declined. I do not know if any of you have any experience with 2-10 Home Buyers Warranty but 2-10 Warranties generally only cover structural issues. You may have a homeowner with a plumbing defect, but they are having to tender to a 2-10 Warranty, pay the fee to tender to the 2-10 Warranty, and wait months for a rejection on the 2-10 Warranty, all the while knowing that the 2-10 Warranty is not going to cover those claims because we are dealing with plumbing defects and not structural ones. They are delayed before they can do the Chapter 40 notice, putting them at risk of going beyond the statute of repose period. These burdensome, nonsensical, pre-litigation requirements before they can do the Chapter 40 notice to put the builder on notice of the problems need to be changed.

Section 5 goes through the restrictions on what a homeowner can recover as damages in a construction defect lawsuit. As I mentioned, in 1995 when this law was first enacted, homeowners actually gave up the right to go after any punitive damages or any noneconomic, emotional-stress-type damages in exchange for the ability to recover expert fees, litigation costs, and attorney's fees. The reason was that they needed to be made whole. Without the ability to recover attorney's fees, et cetera, they will come out of the ultimate recovery without enough money to repair the home. Assembly Bill 421 seeks to restore the ability for homeowners to seek these fees. It is not a guarantee; it is only if they are the prevailing parties. Most attorneys take these cases on a contingency fee basis. Homeowners can generally not afford the expert fees that are involved in these cases, and they really cannot afford to hire attorneys on an hourly rate to go up against the builders and insurance companies. Without the statutory ability to recover attorney's fees, homeowners are never going to be made whole. What I mean is, if you have a judgment or settlement, the fees come out of that. If they are not entitled by statute to at least seek the fees if they are the prevailing party, they will never have enough money to make those repairs.

We have heard rumors that we are asking for automatic attorney's fees. That is absolutely incorrect. Not only is it an incorrect statement, it is also an impossibility through our court system. If the homeowners lose and they are not the prevailing party, they are not going to get attorney's fees or any recovery. If we take a case on a contingency basis, and we go to trial and lose, we are not going to be entitled to attorney's fees. Assembly Bill 421 is only asking for the right of a homeowner to ask for attorney's fees, if they are the prevailing party, so they can get enough money to make those repairs.

Section 7 extends the statute of repose period from six years to ten years and eliminates the statute of repose period in the cases of willful misconduct and fraudulent concealment. The current six-year statute of repose has really stripped homeowners of the right to bring claims in certain cases of certain defects. I will give you a couple of examples. We have a lot of expansive clay soil in both northern and southern Nevada. Oftentimes, the cracking in the drywall, stucco, or difficulty in opening and closing doors and windows does not show up until year eight, nine, or ten, and sometimes after that. We have a geotechnical engineer with us today who will give you details on why the damage the homeowner sees does not show up until after six years. In cases of soils, homeowners are not going to see the cracking and know there are issues until after the six-year statute of repose period is gone, and then they have no recourse.

You will hear from a client who is a homeowner and whose case was dismissed because she missed the six-year statute of repose by two months. She and her family are now stuck in a home that was built on expansive clay soils with significant movement of over two inches, and is still moving. The walls are still cracking to the point she cannot lock her front door. She does not have tens of thousands of dollars to make the repairs necessary to stop the movement.

Another situation in which homeowners are not aware of a defect or problem until after the six years is with plumbing cases. We had a case years ago that was due to copper piping. It was laid in native soil, which was a violation of code. It should have been sleeved or put on sand. It should not have been put in native soil in ranchlands with high acidity due to a history of cattle urine. It took years, but ultimately the copper pipe was corroded from the inside out causing pinhole leaks. In that case, if we had the current law, Ms. Segerblom and I would not have been able to help those people. Those people had to fully reroute the plumbing in their home since they were having significant leaks.

Under the current six-year statute of repose, there are many people—and we have experienced it since 2015—who have called us asking for help, but we have had to tell them they are past the six-year statute of repose and there is nothing we can do to help them. It is important to note that the majority of states across the nation actually have a ten-year statute of repose, including the nearby states of California, Montana, Oregon, and Wyoming. Nevada's six years is definitely on the low end and is not protecting our consumers.

Before Eva Segerblom discusses the rest of the revisions in Assembly Bill 421, I want to say something on a personal note. I am a fourth-generation native Nevadan. I was born in the

real estate industry, going to meetings with my dad when I was in middle school. I love this state and the growth of this state. My husband is a project manager and is in construction. People joke, asking if we met in a lawsuit. No, we did not. I have no desire to stifle the economy of Nevada. We want to see more growth, but we have to put protections in place.

You will hear that Nevada was in a recession, and it was not until 2015 when all of a sudden the construction industry boomed after the law was changed. We need to look at the reality that our entire nation was in a recession, and it was not from construction defect lawsuits. It was because we had a real estate bubble that burst. We had some dangerous loans that were given out which put people in a position of foreclosure. Our nation's economy has come back, fortunately.

Nevada's economy has come back and our real estate industry is doing great, and we are thrilled. But our fear, and homeowners' fear, is that we are now going to put homeowners in the situation of foreclosure, not because of bad loans, but because they now have homes they cannot repair. It is too expensive, and there is no recourse against the builders because the statute of repose period has passed. Homes are our biggest investments in life. We have clients who are first-time homebuyers who are thrilled to buy a house until they move in there and realize they now have all of these repairs that need to be made that they cannot afford. We have had veterans invest their entire retirement funds thinking this will be their last house only to have it crumble around them due to it being built on expansive clay soil.

[Assemblywoman Cohen assumed the Chair.]

We have a lot of amazing builders in this state. I have worked with a lot of them. We have builders that Ms. Segerblom and I never see on the other side of litigation, ever. There are also builders out there who violate code and who do not use good building practices. It is for those builders that we need to have adequate protections in place for our homeowners, which is why we are asking you to vote through the changes set forth in Assembly Bill 421.

Eva G. Segerblom, Attorney, representing Nevada Justice Association:
I will go over the last two sections of the bill. Section 8 is the clarification of the law regarding homeowners' associations (HOAs). Currently, HOAs only have standing to pursue defects in common areas. That was a change made in 2015. However, there are many instances when an association may have a legal obligation to maintain, repair, or replace areas that are not common areas. For example, oftentimes in condominiums or townhomes, associations have the legal obligation to maintain, repair, or replace the exteriors of buildings and roofs. Currently, with the changes since 2015, an association does not have standing to pursue defects in those exteriors or roofs because they are not common areas.

This also applies to single-family homes. For example, there are a number of communities in Nevada that have rockery walls. They connect through backyards of individual lots. They are on the individual lots, but the association has the obligation to maintain, repair, or replace those rockery walls. It is not common area, so the association does not have standing to pursue defects in the walls, but the homeowner does not have the ability and standing

to pursue defects because they do not have the obligation to maintain it. Section 8 is trying to clarify the law to make it so that, if the association has a legal obligation to maintain, repair, or replace, they should also have the standing to pursue defects in that area, whether it be common area or something else.

Section 9 is a simple statutory requirement that says the contractors will carry public liability insurance in an amount for what the project is that they are building. This is a very straightforward consumer protection. It echoes a lot of other states that have a similar, if not identical, requirement like Oregon, Florida, Louisiana, Utah, Tennessee, Kansas, Delaware, and Kentucky. This will protect both consumers and builders. We are aware that a fiscal note has been placed on the bill because of this. That is not an item in the state's budget. This is a policy committee, so we will address that with the Assembly Committee on Ways and Means if this bill moves forward with this section in place.

Last, I want to make the Committee aware that this bill does not seek to repeal any other remedial measures that were put in place after the HOA scandal in Las Vegas. Homeowners and Nevada residents should not be penalized or have their rights stripped because of the criminal wrongdoing of one contractor and one attorney over a decade ago. The Nevada Justice Association members, as well as all of the attorneys who practice in this area, fully support all of those remedial measures that were put in place. Several new laws were passed because of what happened in order to stop this criminal wrongdoing from ever occurring again. This bill does not in any way seek to repeal or change any of those remedial measures put in place.

It is difficult every day to tell people that I cannot help them. In the past year, only 20 construction defect lawsuits were filed. Unfortunately, this is not because all of the homes in Nevada are being built without defects. It is because changes in the law have made it impossible for homeowners to have a remedy. The fact is that the current law puts all of the risk on the homeowner purchasing a home because they do not have recourse if there is a problem with the building. Assembly Bill 421 will ensure homeowners buying new homes can be made whole in the eventuality that they need to pursue a claim for construction defects. We urge you to vote for Assembly Bill 421.

Kelly Cruz, Private Citizen, Sun Valley, Nevada:
I live in Sun Valley in north Reno with my husband and my son. I am a teacher, and we are constituents of Assemblyman Daly.

In March 2017, we sent a notice to our builder under Chapter 40 because our home was moving and cracking, both inside and out. We later learned from an expert that the movement and cracking was the result of our home being built on severe expansive clay soil. We started to have difficulty opening, closing, and locking our doors and windows. Eventually there was such a separation in between our walls and our ceiling that it looked like our roof was coming off. You can see that type of separation in one of the photos that I submitted [included as part of (Exhibit D)]. Some of the cracks in our house are easily two inches wide. They run throughout our house.

Unfortunately, at the time we sent our builder our Chapter 40 notice, our home was just months over being six years old. Our builder did not elect to make any repairs to our home. We filed a lawsuit in hopes of getting some relief to repair our home. Our case was dismissed because we were past the six years in spite of the fact that we did not know there was a problem with our home until that time. It did not seem fair. We lived in that house for over five years with nothing and no indication that anything was wrong. We had a beautiful home, and I was proud to live there. Today, our home is still moving, and we have been told by experts that our home will not stop moving without a very expensive repair. My husband and I both work, but we cannot afford to spend tens of thousands of dollars to stop our home from moving. It is embarrassing to have huge cracks inside and outside of my home, and I feel unsafe. I am worried when I look at my son's room. He has to live with huge cracks in his walls. Given the condition of our home and our financial inability to make the necessary repairs, I do not know what we will do going forward. We will never be able to sell the house in its current condition.

I am here in support of Assembly Bill 421 because the current law did not protect me and my family when we needed help due to the builder's faulty construction of our home. We have had no recourse under Chapter 40 and no ability to seek any money from the Residential Recovery Fund because we are past the four years allowed under that. If Assembly Bill 421 had been in effect when we did our Chapter 40 notice, we would have been able to recover enough money to actually repair our home and stop it from moving. For people like me who work hard to buy a home—and whose home is our biggest investment—having a huge cost to repair hanging over my head is wrong. I wish this bill had been in place when I discovered problems with my home, and I urge you to vote in favor of this bill to help other homeowners like me in the future.

Vice Chairwoman Cohen:
Before Mrs. Cruz steps away, do you have estimates of what the cost of the repairs will be?

Kelly Cruz:
I do not have estimates. I have only been told about the suggested repair to our home, which is on a slab. The repair would be a five-foot-deep, two-foot-wide, cement-filled perimeter. The house is about 1,800 square feet. I do not have an exact idea what the cost would be to fix it. It is not something we can do. We are struggling just doing cosmetic repairs on the inside of the house.

Edred T. Marsh, Principal Engineer, American Geotechnical, Inc., Las Vegas, Nevada:
I am a registered civil and geotechnical engineer. I have been practicing for 31 years in the industry. My main area of practice is geotechnical engineering, and I specialize in forensic geotechnical engineering. I am registered in eight states. I am a Nevada resident, and I have been registered in Nevada since 1996.

I will give you a little bit of my background. I started at the same firm about 30 years ago, and we specialize in geotechnical engineering and soil mechanics like material testing. We work on the building side and have a specialty in forensic engineering. I work with

builders and subcontractors, but recently—the past 20 to 25 years—I have focused my studies on forensic geotechnical engineering where I look at problems of various types of structures. It could be infrastructure projects like pavements, bridges, commercial buildings, and high-rises. Most of my work has been in the southwestern United States. I have testified in trials and arbitrations more than 30 times. I have been deposed on construction defect matters more than 300 times. Over the course of several years, I have become very familiar with the definition of "construction defect." I will not bore you with the description of construction defects.

I want to point out a couple of things. The laws, from a scientist's perspective, should be based on common sense. There are two things that I want to talk about today and that would be the six-year statute and a portion of the definition of "construction defect," which relates to building code violations. I have a few slides that I have prepared that I would like to show you (Exhibit D). The past law that you heard about earlier dealt with a ten-year statute until 2015. In most states where I practice, we have a ten-year statute. Unfortunately, soil problems take a long time to manifest. The drought that we have gone through for the last seven years in the southwestern United States is a perfect example of why things take time to manifest. When a home is built on expansive clays or fill soils, water is usually the triggering mechanism that facilitates differential settlement and other types of soil problems. When we go through periods of drought, it can take several years before the water can percolate down into the soil and trigger problems. The testimony that you just heard is a perfect example of that. I have been in that community, and I have seen those homes. There is variable performance. For five years we did not have much water seeping into the soil.

There can be a construction defect, a problem with the foundation system, or a problem with the underlying soils, but a reasonable homeowner would not realize that. They are generally told that the little cracks are normal settlement cracks and they will go away. We will patch them up, and you will not see them again. This process continues. A certain amount of cracking is normal, but when you have very large pervasive cracks and they develop in patterns, it takes a lot of time for these things to manifest. In my experience of looking at thousands of developments in tens of thousands of towns, the most common types of soil problems are differential settlements and expansive soil influence. There are other problems that I will touch on, but these problems generally develop in the eight- to ten-year time frame. At six years, you may see it in a very low percentage of the projects, but it really takes time for these things to manifest.

I want to quickly run through the five most common soil problems [page 2, (Exhibit D)]. The differential soil settlement is one. That is the one that most people are familiar with where the ground drops or subsides and structures sitting on top of that can sink into the ground. The differential soil settlement is probably the most common type of problem that we see.

Expansive soil influence, which you have heard about already today, is very common. Nevada and many areas of the southwest United States have expansive soils. Expansive soils

are normal. They exist in many areas. If you design and construct for those conditions, it is not a problem. What we see, though, is that the standard of practice in the industry is getting better, but the underlying problems with the design and construction contributes to these issues and can be very expensive to fix.

Slope influence and instability is where a slope moves or there is a landslide. That is less common, but we do see that a lot in the hills around northern Nevada and in southern Nevada.

Corrosive soil issues, where we have sulfates and chlorides in the soil, attack the cement paste. We see a lot of deterioration of concrete. We also see corrosion of buried metals and other things like that.

Last is water-related damage. When water seeps into the soil, it can come up through the slab and cause flooring to delaminate and have issues with that.

Those are the five most common things that we see. There is one thing common among those five issues: they all take time to manifest. It is very rare that you will see a differential settlement problem, an expansive soil problem, or a slope instability issue occur within the first five years. It is even rare to see it within the first seven or eight years. Oftentimes, we do not see expansive soil problems manifest for at least ten years. I think eight to ten years—and I would lean more toward ten-plus—is a more reasonable time for a consumer or homeowner to pursue these types of issues.

I touched on the time-dependent aspect. If I could, I would like to run through some examples of differential settlement. We will not have enough time to go through all of these, but I do have a few slides that illustrate the condition. Page 4 is a diagram that shows three homes that are sitting across a canyon fill. We have a lot of canyons and hillsides, especially in northern Nevada. When a site is developed to facilitate level building pads, areas of higher elevation are cut during the grading process, and they fill in the canyon areas. When they construct homes across them, if they are sitting over the center of the canyon and the soil is not compacted properly, it will tend to settle over time. The way it settles is when water percolates down into the soil and, if it is not compacted properly, the ground will start to reduce in volume or drop. If you are sitting in the middle of the canyon, the home would generally drop uniformly. It would drop straight down, and we call that uniform settlement. That does not cause any damage to a building.

If you are on the edge of a canyon, and it settles nonuniformly, you will get more settlement on one side of the structure than the other. That is called differential settlement land and can be very problematic. If the foundation is not stiff enough to resist that, you will end up with damage to the superstructure: cracks, separations, and things of that nature. These types of problems occur almost exclusively on soils that were not compacted properly.

That is what leads me to the topic you have already heard about: building code violations [page 5]. In 2015, when I saw that taken out of the law, I was shocked. In the building

industry, we have building codes. All of the building is based on planning, and all of the planning is based on ordinances and codes. Building codes set minimum baseline standards. At no time would you like to see anything constructed less than what is in the building code. You would hope that it would be much greater. At least it sets a baseline, so people who are practicing in the industry—architects, engineers, and contractors like plumbers, roofers, and builders—can go to this code that is standardized. Up until 1997, we had the Uniform Building Code, then in 2000 the International Building Code was adopted. Southern and northern Nevada have building code amendments that take the basic codes and adjust them slightly for geographic conditions and things of that nature.

With settlement, nine times out of ten, when you see a problem, it is because we have poorly compacted fill soils. The minimum building code standard for compacted fill is 90 percent relative compaction. On a scale of one to ten, it is required that the soil be compacted at 9, or 90 percent. Soils can be compacted as much as 100 percent, but what experience has shown is when you compact it to 90 percent, you have very little settlement. That has been in the building code since I started practicing in the eighties, and that is the standard of care in the industry. If a building code is not followed, you can have significant problems. What the current law says is that you do not have to compact it to 90 percent even though it is a building code minimum standard. If you do not compact it to 90 percent, you end up with settlement.

I mentioned that it takes many years. Most people, when they start seeing little cracks, do not suspect that there is an underlying defect. Some cracking is normal, but when it gets to the point that they start being large pervasive cracks and they end up in patterns indicative of soil movement, it takes a long time for a homeowner to understand that. They are difficult to investigate and properly diagnose. Settlement problems are very expensive to fix as you have heard and will hear.

We have maps and things that show areas that are more susceptible to settlement. This [page 6] happens to be a map of the Las Vegas Valley that shows collapsible soils. I will show a couple of examples of what significant settlement can cause. This is in Pahrump, Nevada, where we have a separation of a wall [page 7], and large pervasive cracks [page 8]. This is obviously not a normal condition. This is very severe where we had eight to ten inches of settlement in this building that was built on collapsible soils. We have slab cracks and tile cracks [page 9] that occurred from that.

This is an area in Reno where we have some collapsible soil that undermined the foundation [page 10]. You did not see a single crack on the wall in this house because the foundation was spanning over, but it is slowly starting to dip in that direction, which eventually caused cracks in the home [page 11].

Very quickly, common methods of treatment for settlement is no easy fix once you have a building sitting on expansive soil or soil that is susceptible to settlement [page 12]. In underpinning a home, you have to literally put pylons in the ground. You space them every five to six feet and you underpin the edge of the foundation all the way through the

poorly compacted fill, which is sometimes 40 or 50 feet deep [page 13]. We heard testimony on an expansive soil problem. Those expansive soil problems where you have to put the moisture barrier cutoff wall are sometimes in excess of $50,000 for a single-family home. An underpinning job like you see on the screen can easily be $50,000, but can exceed $100,000. It is very easy to treat the soil at the time of original construction, but once a home is built on it and it starts to move and settle, it is extremely difficult and expensive to fix.

The other type is compaction grouting [page 14], where you try to densify the soil, but you still have to drill down in the ground and inject a grout to try to densify the soil, which can be very expensive also.

Since I am about out of time, the two things that I want to get across are that the six-year statute is not long enough for soil problems. It is fine for a leaky faucet or a light that does not work, but when you have a significant soil problem, that takes years to manifest. I would push that closer to ten years and even further if you can. Common sense says a building code violation should be a construction defect. I cannot think of any other thing that would come first before a building code violation being a construction defect.

Vice Chairwoman Cohen:
We have some questions for you, Mr. Marsh, if it is okay with the presenter. We are going to jump out of order because we have some people who specifically want to ask Mr. Marsh questions.

Assemblywoman Miller:
Thank you for explaining that in everyday language. I am thinking in the position of a homebuyer or consumer, so when you are talking about these things, is this something that the homebuyer is aware of? Are they aware of compacted fill? Are they aware that this has taken place before the beginning of the home construction?

Edred Marsh:
Generally speaking, no. The layperson, the common homeowner, does not generally have a scientific background. They understand that the house is going to be put on a foundation system of some sort and set on the ground. By the time they come out and look at a project, it has already been mass graded, all the hills have been cut down, and all the valleys have been filled in to facilitate level building pads. The foundation sits on top of that. They walk into the home, and they occupy it. They do not generally know that they are sitting on explosive, expansive soils. They do not know they are sitting on a fill that was not compacted properly.

Assemblywoman Miller:
In the medical industry, we realize that there are all kinds of hidden costs coming since no one considered the anesthesiologist not being in network. What you are saying is that in no way does a homebuyer even know that there was a hole that was filled in to build his house on it.

Edred Marsh:
Generally speaking, no. Sometimes they are handed a thick package of information with all types of things that will explain that their home is located in an area that might have expansive soil, but it has been engineered to deal with this condition. They would not suspect that there is an underlying defect. They might understand that we have expansive soils. Before my wife married me, she had no idea what expansive soils were; she does now. Most people do not understand that the little clay minerals can swell when they get wet and produce tremendous pressure on a foundation system.

Assemblywoman Miller:
Do you believe that homes are better structured when we build foundations on basements or just the slabs on the ground?

Edred Marsh:
You can do it either way.

Assemblywoman Miller:
So that makes no difference.

Edred Marsh:
That is correct. If you have a basement and it is designed properly, expansive soil will not push in the walls. If you have a slab and it is rigid enough so that it does not bend up and down with respect to the expansive soils, you are fine either way.

Vice Chairwoman Cohen:
For the presenters, we are at about 25 minutes, including questions. I have several people who would like to ask questions already. I will have them continue to ask Mr. Marsh questions, but then we have several other questions.

Assemblyman Fumo:
I appreciate your analysis of the compact soil. It reminds me of when I bought a home and called the builder about an issue we had with the home. I was literally told to pound sand.

In the law, we have a per se element: the thing speaks for itself. If a code was violated during the construction, why would that be taken out? Why would that not be something that automatically speaks for itself as a violation in the law?

Edred Marsh:
I do not know. That is my point. When I saw that taken away in 2015, I was shocked. I had testified, at that time, more than 250 times. The very first thing you look at is whether it violated some code or ordinance. Standard of practice in the industry is based on minimum codes and standards. It is astonishing to me that you do not have to follow those standards and codes.

Assemblyman Fumo:
Would you explain the difference between statute of limitations and statute of repose, and when does the statute of repose start ticking? Is it when the homeowner accepts the keys? When they sign the contract? Why would we shorten that time if they would not know there was a defect for five or six years?

Eva Segerblom:
The difference between statute of limitations and statute of repose is that the statute of limitations is based on the date of discovery of an injury. For most other areas of the law, you would think of it like the date of the accident. That gives you the time period in which you have to bring the claim. The statute of repose is an outside limit to bring a claim no matter when it is discovered. In construction defects it is from the date of the substantial completion of the home, which is typically the date the certificate of occupancy is issued. It does not matter when that home is sold or when the person first lives in the home, or anything like that. It is always based on the date of substantial completion. It is currently six years from the date of substantial completion of the home, and it does not matter when you discover the injury. You never have the right to bring a claim after the six years.

Assemblywoman Tolles:
In Nevada, what percentage of construction defect claims were due to soil issues versus other issues?

Edred Marsh:
When I get involved in these cases, there are generally other experts involved too. We have plumbing, roofing, or architectural issues. I do not know the exact percentage. I would say the soil problems are probably less frequent than other types of problems like window issues. When you have soil problems, they are usually very significant and expensive to deal with. They are tough to investigate and diagnose. They are extremely difficult to fix. Geotechnical issues are probably less common than other types of construction defects. I have been involved in well over a thousand construction defect cases where we have significant soil problems. I am usually brought in to look at a project, and many times I will not find soil problems, so I will give it a clean bill of health. It is a good idea to have the inspections early on and determine if you have soil problems. If you do, you can get in there and start investigating them quickly.

Assemblywoman Tolles:
Was that thousand all in Nevada or elsewhere? Did all of those confirm there was a soil problem?

Edred Marsh:
When I engage in conducting an investigation, we have confirmed that there are soil problems. There are certain things that we do early on in the reconnaissance phase that will give us an indication whether there is a soil problem. We will review the site history and look at the area. We review the soil reports and do some performance gathering. The cases that I have worked on where there were soil problems were in excess of a thousand. I have

looked at tens of thousands of projects, but not all of them have soil problems. The types of soil problems we have are variable.

Assemblywoman Tolles:
My question was in Nevada versus other states.

Edred Marsh:
Nevada is probably 50 percent of my practice. The remainder would be California, Arizona, and some as far as Florida—but not as frequently. My home base is the southwestern United States. It is probably 50 to 60 percent in the state of Nevada.

Assemblywoman Krasner:
I am looking at section 4, subsection 3, and see that you have struck out paragraphs (a) and (d). Why did you feel it was important to strike those sections out? How did you come up with the change from six years to ten years for the statute of limitations? Is that directly related to what you have just described about the shifting of soils, or is that something that other states do and we are low on that?

Ardea Canepa-Rotoli:
The ten years is for the statute of repose. The reason ten years was chosen is because of the soil cases. Ms. Segerblom and I have quite a few soil cases and have had a lot over the years. We get calls at years eight, nine, and ten where the homeowners have not discovered the cracking until that time. There are other defects that are similar in which they do not know until later.

The majority of the states have a ten-year statute of repose. I mentioned California and Oregon, which have ten years. Arizona has eight years, but if you discover it in the eighth year, it goes to nine years. Nevada being at six years is really on the bottom end. We were at ten years prior to that 2015 change for latent defects.

We believe ten years is reasonable. You heard Mr. Marsh say that he would like to see it beyond ten years. We are trying to at least get to what the majority of states in the nation have, which is ten years.

Vice Chairwoman Cohen:
Besides soils and plumbing, is there anything else that tends to manifest after six years?

Ardea Canepa-Rotoli:
We have seen roofing issues. We have high winds in our area and sometimes someone may violate code by not using enough fasteners. It may not be until you have that high wind that it loosens enough that tiles or shingles blow off. I am sure there are others that I am not thinking of now. Obviously, all of the soils that Mr. Marsh went through are variations. The important thing is that the majority of states do have ten years for a reason. You may have things repaired, and you cannot fault the builders. You may see cracking in a home and a builder may come in and do a patch-job repair on stucco or drywall. It may take years to

manifest, and they may think it is just normal settling. We all know we have normal settling here. It may take years again to manifest where they realize it is not just normal settling. There are a number of different issues that come into play when you need to have more than six years to bring a claim.

Vice Chairwoman Cohen:
We have 15 more minutes, including questions. We still have several questions, but we will have your other speakers come up.

Colton Carmine, Private Citizen, Reno, Nevada:
I moved to Reno in 2008 and bought a house there. I still have that house. My wife and I bought another house, and I believe the Committee has been provided with pictures of that home (Exhibit E). My wife and I contracted the home in January 2014, and it closed in September 2014. I was semiretired, living in Nevada, and came by the job site often, especially during what I thought were critical events. I took pictures and spoke to folks on the job, including the builder and his people. I am proud to say that last August, on Sunday morning the eighteenth, my counsel, Ms. Segerblom, sent her staff and a group of legislators to my house at 9 a.m. to look it over. That was very impressive because it was an example of the work ethic that a lot of people do not have. I do not know if anyone here was there.

I will describe what the pictures show. The first picture [page 1, (Exhibit E)] is a portion of the roof and the center eve where a roof leak allowed rainwater in the laundry room and the upstairs hallway right after I closed. I did not move into the house immediately after closing. We signed the papers, but we had another house and were not in a hurry to go from one place to the next. When I walked through the house, I noticed water on the floor on the tiles in the hallway and the laundry room, but I assumed the cleaning person who had cleaned the house had probably left some water on the floor. It was not alarming because it was on the tile. A couple of weeks later, in October, when I went back to the house to start moving things in, there was water on those same areas of the floor. I looked up, and it was coming through the canned lights. I notified the builder, and someone came out who claimed it was fixed. It rained again and leaked again. The roofer came out and, at that point, it appeared to be repaired. The first picture is in the vicinity of the top of the roof where the leak was. You can see in the picture that it was during some destructive testing, or demolition, trying to get to the bottom of it. This was not done with the builder, but it was done last year. You can see all of the construction debris found below the tiles: pieces of cut tile, pieces of wood that had been trimmed, building paper, and there is even a cigarette box and some other things.

The second picture is the west-facing wall of the house where you can see the entire wall. Picture 3 is a close-up of the right lower window. The rest of the pictures are self-explanatory. There are a lot of issues with my house, but the two that are first and foremost in my mind are that, when you buy a home, you want a roof over your head and walls to protect you from the elements. I have problems with the roofing and the stucco walls. I noticed it soon after closing.

One more picture, picture 4, is a picture of the base coat of the stucco before the last coat of the acrylic stucco was put on with the color. You can see the cracks in the base coat of the stucco. Those were never repaired, and there are a lot of other areas of the house that have the same cracks. It was finished without doing anything to the cracked base coat.

On three or four different occasions after I closed, I complained to the builder about the stucco and showed him the cracks and what was happening. Some repairs were done, but it was always a negotiation: "I will fix this and this, but not that." I tried to work with the builder to get a resolution that did not involve litigation. I am a retired lawyer. I was a prosecutor for 30 years in Oakland, California, in Alameda County. I tried to avoid litigation, but sometimes cases have to be tried.

In 2017, while attempting to work with the builder on a written, specific scope of repairs, some of the stucco began to actually fall off the house in pieces. We have now progressed from cracks to wider cracks to displaced cracks and compound cracks. It is not just a crack, but one side is higher than the other indicating there is pressure from the inside. I had concerns so I got a copy of the approved plans from the building department. When I got them, I discovered, among other things, that many of the stucco specifications in the plans—called out by design professionals and the building codes—were omitted from my stucco system. The same is true for the roofing specifications. There were code violations and errors that would not have occurred had the builder followed the plans that were approved for the house.

At that time, I confronted the builder about the deviations from the plans—and there have never been any approved changes—and it reminded me of a time before, when I talked with the person in charge of the quality control of my house. While looking into the subcontractors' work, he told me they could unilaterally change the plans whenever they wanted. I thought he must be kidding, since I had never heard of such a thing. I confronted the builder, and once I told him about the problems with code and their not following the plans for the house, he referred me to his lawyer. Through his lawyer, the builder refused to do any further repairs unless I signed a complete, written waiver for the entire house. In other words, I had to give up any future problems being solved. On top of that, I had to sign that before they even did the work. I did not want to do it—to go down the litigation route—but his lawyer told me if I hired a lawyer, to get an expert to examine the house, and they would take a look at those things. There was no way in the world that the problems I was having came from anything other than shoddy construction. They would not deal with me and wanted me to get a lawyer to go through the Chapter 40 process, and here we are.

I am concerned for some of my neighbors. My home takes the brunt of the weather since it is up on a hill. It has a southwestern face, so my stucco failed quicker from more exposure to the elements than my neighbors'. A lot of them have surpassed the six-year statute or are coming up on it. I have owned four stucco homes before this: two were new and two were used. If you added up the entire number of cracks that I had in those previous four homes, this home exceeds all of those put together by a huge percentage.

Assemblywoman Hansen:
I want to lay a little groundwork before I ask my question. Since 1999, the Residential Recovery Fund has existed through the Nevada Contractors' Board. That is funded by contractors and subcontractors annually as they participate in keeping their licenses. It is there as a way to resolve the kinds of issues that homeowners may have. Before the 2015 reforms, how did clients come to you? I have been party to presentations from attorneys at homeowners meetings in developments. They also send out mailings. Do the majority of your clients come from that, or do they just come in off the street? When they do have an issue, do you let them know about the Residential Recovery Fund?

Ardea Canepa-Rotoli:
We generally get most of our clients from incoming calls. We cannot solicit clients without knowing that there are issues in the neighborhoods. If we get a client call from a neighborhood, and they tell us that they have talked to their neighbors who are also having problems, we will send out an informational mailer at that time. The mailer states that we have been contacted by their neighbors and have been made aware that issues may exist, and that we would be happy to talk to them and give them a consultation to see if we can help them. We never go out to neighborhoods seeking problems. We never send mailers out unless someone from the neighborhood contacts us directly to tell us there are issues going on.

Regarding the Residential Recovery Fund, we certainly do tell people about that fund, especially those we cannot help. Here is the problem with the recovery fund. Under the statute—the recovery fund starts at NRS 624.400 and goes on from there—homeowners only have four years from the time the work was done to even put in a claim for that fund. We are back to a situation where many homeowners are well beyond that four years to even submit a claim to the recovery fund.

All clients—and everyone we have ever talked to who has tried to go through the recovery fund—say the other problem with the recovery fund is the application itself. The application asks homeowners what they have done prior to submitting it to the recovery fund. It even asks whether they have already sued the contractor. The homeowners basically have to exhaust all remedies possible before they are able to get any funds or even submit an application. By the time the homeowners have gone through the avenue of Chapter 40 and trying to file a lawsuit, they are well beyond that four years. From our experience, unfortunately, the recovery fund has not worked for clients, whether for timing reasons or that they are told that they have not exhausted every remedy before applying for the recovery fund.

Assemblyman Roberts:
Regarding section 1 and adding the code violations, how broad is it and can it be any code violation from electrical to plumbing? What liability does the county, city, or municipality have that has signed off on the code violations? How does that work together?

Eva Segerblom:
To address the first part of your question, the proposed change to section 1 would be any code violation that would be considered a construction defect. It does not mean you have a claim, it just means that it may be considered a construction defect for purposes of pursuing a claim.

Regarding the potential liability of municipalities, in 1999 the Nevada Supreme Court issued a ruling that made building inspectors and municipalities immune from any claims for failure to see something in the building inspection process and for approving any plans for any part of the construction. They are immune.

Vice Chairwoman Cohen:
We are right at 1 hour and 25 minutes. Since you have someone else in the presentation, I am going to give him two minutes, and we will add that time onto the opposition's time.

Bruce K. MacKinnon, Private Citizen, Reno, Nevada:
I live in the Somersett community in northwest Reno. I will jump to the end of my comments. We bought our house in 2007, but the certificate of occupancy was issued in late 2006, so it had been in existence for a year before we moved in. In July 2014, we started noticing cracks in several areas, most notably the exterior and interior wall around a large family room window, the master bedroom, and the great room. As has been referenced, we thought it was normal settling, but the cracks kept getting larger and larger. We knew we needed help. We engaged attorneys, and they engaged expert witnesses. After extensive analyses and evaluations by the experts, we determined we had three problems. First, we had soil issues causing foundation instability and slippage of close to one inch. We had failure of a large window in the family room, necessitating major repairs. There were similar issues in the master bedroom, and the need for mold remediation was a major conclusion.

Someone referenced improperly fastened roofs, and we experienced that problem at the same time. We seriously discussed moving to a smaller home, but as the problems became better understood, we were advised that the sale of the house would be impossible. It would have brought a price of under 50 percent of what we paid for it.

After filing a notice of action, we entered a two-year process of diagnoses, evaluation, depositions, and finally negotiations. We reached an agreement and received funding adequate to repair the damage and restore the house. During the repair process, the living areas on the ground floor were essentially unusable. The repairs took almost nine months, and for most of that period, our meals were eaten out and the house was used only for sleeping.

We are still not back to normal. We have suffered great emotional hardship and disruption of our professional and personal lives. We were fortunate to avoid financial hardship, but will not soon recover from the stress and duress. Had the statute of repose been six years, only five years after we bought the house, we would never have identified the issues in time to seek repairs or recompense. Recall that we were in year eight before the symptomatic

cracking was identified. With a six-year statute, we would have borne the financial burden of remediating the serious defects in the construction and certification of the home. For this reason, I strongly implore you to support Assembly Bill 421.

Vice Chairwoman Cohen:
With that we will conclude the presentation. The presentation went three minutes over, so we will add that to the opposition. [Assemblyman Yeager reassumed the Chair.]

Chairman Yeager:
We are now going to open it up for opposition. As I stated before, I am going to ask folks not to come forward at this point because I do have a particular order that I would like to call folks up. We will give the individuals here in Carson City a little bit of time to talk about opposition and then take some questions. We will then take the string of other folks who want to oppose the bill. We will have 1 hour and 18 minutes to get through the opposition before we get to neutral testimony.

Joshua J. Hicks, representing Nevada Home Builders Association:
The Nevada Home Builders Association is a combination of the Southern Nevada Home Builders Association and the Builders Association of Northern Nevada. We are here today in opposition to Assembly Bill 421.

You heard a little about the history, and I will also give you some historical context as briefly as I can. You heard what Chapter 40 is and what construction defect is. It was set up in the mid-nineties as a notice and opportunity-to-repair process. The idea was to avoid litigation, and if there were issues in a home, they would be identified. The homeowner would give notice, and the homebuilder would come in and have the opportunity to inspect and repair. The idea was to speed things up and make sure problems were being addressed and resolved. Unfortunately, there were some issues with the law from the start that turned it on its head, and it went the other way. It turned into a much lengthier and expensive process for everyone involved. Homes were not getting fixed quickly.

We submitted a letter on the record that is called "The Problem, the Solution, and the Results" (Exhibit F). We identified some of the issues before 2015. We had a very litigious environment. We had homeowners who were 38 times more likely to be in a construction defect lawsuit in Nevada than in other state. We had very few homeowners actually seeking out an attorney in those cases. Most had become involved with a case that had been arranged by others—usually a homeowners' association (HOA)—and that they had not known about. Many became aware of it after the fact. It took about 2.6 years to actually reach a resolution in a construction defect case when the homeowner finally got some kind of compensation.

Many of the incentives were heavily skewed toward litigation. We saw some of that manifest in attorney's fees. Attorney's fees, prior to 2015, were not prevailing party fees. That was some of the testimony today. They were actually damages. If a case went through on a defect, the fees became a damage and were not really a discretionary item. They were

part of the damages. We saw many cases where the fees grossly outweighed the recovery to homeowners.

Insurance costs were significantly higher in Nevada than in neighboring states. In many cases, insurance became unaffordable for many builders, particularly in the multifamily market.

Some changes went through in 2015, and I want to highlight those because that is what the current law is that this bill seeks to undo. This bill is a substantive repeal of what happened in 2015. It does not repeal everything, but it repeals the substantive portions of Assembly Bill 125 of the 78th Session. Current law requires a clear definition of a construction defect. It requires either physical damage or a risk of physical damage to persons or property. I want to make it clear that there have been comments on code violations. Code violations are construction defects if they cause problems or have a risk of causing problems to persons or property; those are actionable. Soil reports are a good example. Soil reports are required to get the house built and get it sold. There are engineers who come out and make those types of tests to make sure the soil is up to code before the house is sold.

The bill sets forth an allowance for fees that is actually more generous than most civil cases. For typical civil cases in Nevada, the fees are discretionary with the court in construction defect cases. There is an ability to make an offer of judgment from the beginning, before you are in court. If that offer is not beat, the party gets all of their fees and all of their costs. That is an important piece of Assembly Bill 125 of the 78th Session. It is important to note that that is not being suggested for repeal, which tells me that it is working for homeowners. That is why it was in there: to encourage quick resolution and quick responses in these cases.

You have heard about the six-year period of repose. We have had periods of repose in Nevada since 1965. That is when they were first put in place, when it was actually six years. That has changed over time through various legislative sessions and for various reasons. Before 2015, it was between six and ten years. It was either six, eight, or ten depending on the nature of the defect itself. What the bill did was to simplify it down to one consistent period that was set at six years.

The specificity and the notices are very important. One issue that homebuilders had prior to 2015 was that they would get a notice of a defect that was vague. It really undercut the whole purpose of Chapter 40, which was to give notice and the opportunity to repair. It was a good change because it gave notice so that when a builder shows up, he actually knows what he is looking for. It was the same thing with home inspections. Builders had many problems—they would show up for home inspections but no one would be there to cooperate or to show them where the actual claimed defects were. That undercut the system as well.

The HOA issue was mentioned. One thing that the bill did in 2015 was to remove the ability of the HOAs to bring cases except for common element cases. That was in direct response to the scandals in Las Vegas where HOAs were commandeered by criminal elements taking

over in the construction defect suits. It was broader than just one attorney and one contractor. In fact, there were 44 convictions or pleas that arose out of that case. We also required notices to be on a house-by-house basis. That was another important piece.

The home warranty piece requires exploration exhaustion. I will note that it does hold the period of repose while those warranty claims are being posed. It does not run the risk of the clock running out on a homeowner. Finally, we set forth some clear rules on indemnification clauses for homebuilders and subcontractors.

That gives you an overview, and I am going to turn this over to Mr. Gordon. We have now had four years to see how these laws work. It has been a good opportunity to gather data to see what is going on out there, and how this has impacted the housing market, home affordability, and some of the things that we have seen on the global system.

Brian Gordon, **Principal, Applied Analysis, Las Vegas, Nevada:**
The home building industry asked us to review and analyze a number of elements related to Nevada's housing market. We have gone through the research and analysis exercise. The key focus of our study includes looking at supply and demand conditions in both the resale and new home construction housing markets. We also looked at housing affordability, some of the builders' responses to housing affordability challenges that the industry and homeowners in Nevada are currently facing, as well as some of the results of construction defect-related claims as Mr. Hicks referred to and the overall economic contributions of the home building industry in Nevada (Exhibit G).

You should have received a fairly lengthy report that we have put together (Exhibit H). I have it on the screen as well. My goal here is not to walk through the entirety of the report. I think that would be too much. I would like to walk through some of the highlights from the "Summary of Findings" section, the first dozen or so pages of the report.

First of all, like any real estate market in the country, we tend to look at the underlying fundamentals of the economy as the key drivers in terms of overall housing demand [page 5, (Exhibit H)]. Here in the state of Nevada, at different points during the past year, this state has ranked at the top of the nation in terms of population growth, employment growth, and personal income growth. All of those factors tend to generate demand in the overall housing market. At the same time, the statewide community is tracking about $36 billion worth of major investments that are taking place in both the north and south in Nevada. All of that points toward continued growth and expansion of the population and employment base, and is further driving demand in the local housing market.

We also wanted to take a look at what is happening in terms of the overall resale market [page 6]. Price points statewide have yet to reach back to their prior peaks on an aggregate basis throughout the state, so there is still some room there before reaching back to those 2006 and 2007 high points that we saw. Certainly, northern Nevada is escalating beyond those points today. Southern Nevada has yet to reach back. They may reach back to those prior peak periods in the next 12 months or so, but we are starting to see equity gains, which

is having an impact on the borrower profile in Nevada's housing market. If we look at where homebuyers or borrowers sit today, about 4.3 percent of folks are underwater, meaning that their houses are worth less than what they owe on their mortgages. That is right in line with what we are seeing nationally at 4.2 percent. You may recall that the state led the nation in terms of underwater homes for the better part of the last decade. Given shifts in the housing market, as well as home price appreciation, we have fewer and fewer folks who are struggling with their home value relative to their mortgage balance. We are seeing some improved equity profiles which are benefiting homeowners overall.

With regard to the new home market, there is no question that new home prices are at an all-time high across the board, both north and south [page 7]. Some of the graphics here demonstrate where price points have been and where they are trending overall. Prices in the new home construction market are largely a function of the input of development activity and the cost of homes. We looked at all of those inputs and tracked those in this analysis, but if you want to think about some of those key inputs, think of the cost of land in Las Vegas. For example, the average price for an acre of land is trending at about $400,000 per acre. That is a significant component of the overall housing equation. You also look at things like the cost of labor and materials. All of those inputs have been up pretty consistently over the last several years. There is no doubt that construction labor has been a challenge in terms of finding enough qualified labor. What we have seen is that the construction sector is the fastest-growing employment sector in Nevada in percentage terms. We have also seen that construction wages are the fastest-growing sector of any employment sector in the state as well. All of that contributes to increased costs that must be passed on to potential buyers.

I also want to talk about what we are seeing in terms of new home supply conditions. This is relevant and important as it relates to the topic for today. A few different graphical elements on the slide [page 8] that I want to point out are, if we look statewide, the number of folks who exist in the market today and the number of jobs that exist relative to the number of households, on average there are about 1.35 jobs today for every housing unit that exists in the state of Nevada. If we look over the last several years and where we are today in terms of the number of jobs that we are creating relative to the new homes that are being constructed, we have a disconnect. For every new housing unit that is being permitted by home builders, or the number of new starts, if you will, we have about three jobs for every one of those new homes being created, suggesting that we are simply not building enough homes relative to the number of jobs that we are creating in Nevada.

As a result, we are seeing home prices escalate pretty significantly. Nevada ranked number one in terms of housing price appreciation at various points during 2008. You see where we rank in terms of some of the other western states. There is no doubt that home prices are on the rise. That results in fewer people being able to afford a home. Certainly not all folks are intended for home ownership, but the higher the prices go and the faster the home prices increase relative to incomes, there will be fewer and fewer people who can afford a home here.

The graphic on the bottom right is a really important one. This is the housing opportunity index [page 9]. All this means is that the analysis takes a look at the median home prices relative to the median household incomes in both northern and southern Nevada. If you take a look today, you will see that about 46.4 percent of folks in southern Nevada can afford the median home price. That number stood at almost 90 percent back in 2012. In 6 1/2 to 7 years, we have seen a sharp contrast and fewer and fewer people are able to afford a home. In northern Nevada, the housing opportunity index stands at 37.9 percent. That means nearly four out of ten folks can afford the median home price. That number was also in the high 80 percent range just a few years ago. While interest rates have been relatively favorable in the last couple of months, we need to be mindful of how that might have impacted affordability, as well as on a go-forward basis over the long run.

We also took a look at some matrices that are generated by the National Home Builders Association [page 10]. This is an analysis that they conduct every year that looks at what a $1,000 price increase does for a typical homeowner. For every $1,000 price increase, the first set of columns suggest that about 2,285 households would be priced out of the market as it relates to new home prices. We also had them look at what a $20,000 increase in the home price would result in, in terms of housing affordability. Approximately 46,000 people would be priced out of the housing market with a $20,000 price increase. That is the analysis that they produced annually. We agree with the majority of the assumptions.

One area that we thought was a little aggressive, related to the home prices themselves, was that home prices overall in Nevada are higher. As a result, we asked them to rerun the analysis at a higher price point of about $390,000 for a new home construction in Nevada, which resulted in a thinner segment of the population. A $1,000 increase on those price points—the second set of columns that you are looking at—would price out about 1,157 households in that first $1,000 price increase. At a $20,000 price increase, which would be about a 5 percent price increase from where prices are today, you would price out another 23,000 households. Higher prices result in fewer people being able to afford homes.

We also took a look at housing affordability as it relates to the different product types that are being built and sold [page 11]. The graphic on the right simply depicts the average price points between single-family products and attached products. That could be condominiums or townhouses. The blue area depicts those attached price points, in both southern and northern Nevada. The differential between those two is about one-third in terms of housing affordability. The attached product tends to have lower overall price points due to increased density as you get more homes on similar plots of land, more efficient construction designs, and things of that nature. You can see that the lower price points will have an effect in proving about one-quarter million more households that would have the opportunity for home ownership as opposed to the single-family product.

Chairman Yeager:
Mr. Gordon, you are going on about ten minutes at this point. How much do you have left of the presentation?

Brian Gordon:
I will follow the prior speaker's comment and see how much I can do in two minutes.

The builder response has been pretty positive [page 12]. They are building more of the attached product in southern Nevada for the reasons that I just walked through. You can see the increases in the overall development activity as it relates to attached product. The graphic here [page 13] depicts what is happening statewide. We surveyed builders in the state, and they have been ramping up development activity for attached product. They are likely to bring on about 6,000 new attached units over the next three years, which translates to about 15 percent of the overall product being developed in the attached product component of the market, a more affordable product overall.

We also looked at what is happening in terms of the construction defect reforms that I mentioned [pages 14 and 15]. We are seeing shorter times to settle and fewer notices being filed under Chapter 40. The overall costs to settle are also on decline. We looked at pre-Assembly Bill 125 of the 78th Session settlements and closings and put those on a relative basis to the total number of homes that were sold. On average, that equated to about $5,000 per home that was sold in Nevada during that period. Post-Assembly Bill 125 of the 78th Session, that number declined to about $1,150 per new home that was sold. You have a difference of about $3,850 in additional costs that have been extracted out of the system. That dollar amount equates to about 4,800 households that would have the ability to afford a home.

The final element that I will hit briefly is that the industry asked us to look at the economic impact on the overall industry [page 16]. It generates about $11 billion in overall economic activity. It supports nearly $4 billion in wages, and over 75,000 jobs. This is the home building sector within the construction industry.

David Goldwater, representing Nevada Home Builders Association:
What have we learned today? We knew, we learned, that we had a problem prior to the 2015 reforms. We now know that Nevada is growing; it is growing fast. We know our citizens need a place to live that they can afford. We know that construction defect litigation adds to the cost of housing. We know that the most affordable housing, and often the best entry-level housing, is attached condominiums and townhouses. Those permits have increased 900 percent while single-family has increased 200 percent. We know that the cost of settling a Chapter 40 claim went from around $5,000 to under $1,200 per home since 2015. Most importantly—and I want to commend Ms. Segerblom and Ms. Canepa-Rotoli for continuing to practice in an important area of law—we know that the number of Chapter 40 claims is not zero; they are still being made. In fact, homeowners with real issues are getting these issues addressed faster and to a higher degree of satisfaction since the 2015 reform.

I wish there was a bill that you could vote for that forced all builders to build the perfect house. I promise I would work day and night to get that passed. The truth is that houses are not built perfectly. When they are not, the homebuyer needs fast and effective remedies. No one who buys a house wants a check from protracted litigation that lasts several years and

drains them of time and resources. They want their houses fixed. If they cannot get satisfaction, they want access to fair and swift justice, which is what they have since the 2015 reforms. This study and the material before you prove that Nevada's affordable housing crisis since the reforms of 2015 lowered the cost of housing, provided access to attached homes for lower-income families, and still got people the justice they needed when they did not have satisfaction. Assembly Bill 421 increases the cost of housing, dramatically limits the building of condominiums and townhouses, and returns Nevada to a system of protracted litigation that brought us an HOA scandal and more disgruntled homeowners.

If we are making the data-driven decisions I was hoping for, the data clearly shows the reforms of 2015 are working, and passing Assembly Bill 421 returns us to the bad old days. I hope you consider rejecting this measure.

Chairman Yeager:
I want to go to page 6 of the bill, section 4 [subsection 3]. This is the section that talks about the homeowners' warranty and the fact that, essentially, a claim has to be pursued under that and has to be denied before litigation can ensue. Do we have any relative data since the 2015 changes regarding how often such claims have been made on homeowner warranties, and whether fixes have been made versus denied? Is there any data that exists to tell us what is happening in that regard?

Joshua Hicks:
I do not have any data on that other than anecdotally. We have always taken the position in the building industry that claims ought to be submitted to warranties that many builders have. They have effective customer service departments to deal with those kinds of claims. You are going to hear from some of those speakers, including one of our panelists in Las Vegas.

Chairman Yeager:
If someone would address that at some point, we would like that. To follow up, and you probably do not have this data, I wonder how long that process takes. In my own experience, I have had things go wrong in my house, like air conditioners and such. It was not a quick process to get that taken care of. If anyone in opposition can weigh in on that, one of our concerns is that we do not want to put up an artificial barrier to folks accessing the courts. If that is not data we have today, it would be helpful for the Committee to know that in terms of the last four years. How often are those claims being made? Are they being paid or rejected? How much of a delay is that causing before folks can take advantage of the provisions currently in law?

Assemblywoman Cohen:
Is there anything in the bill that has your support?

Joshua Hicks:
At this time we are opposed to every piece of the bill. We are open to discussing it, but we are opposed to the bill and everything in it.

Assemblywoman Torres:
As a young, new homeowner, this is an issue that is really important to me. To be honest, I cannot tell you how many times something has gone wrong in my house. I find out about them when the problem is significantly worse.

When I think about the changes that we made in policy in 2015, of course that would change the number of lawsuits that exist. I am unclear how this suggests that these claims do not exist. It suggests that it is more difficult for those claims to get to court proceedings. Can you clarify that, because it seems to me that in 2015 we made it significantly more difficult for the homeowners to file those claims?

David Goldwater:
The satisfaction that new homebuyers have now—Chapter 40 only affects people who buy new homes—is that their issues are identified, and it does not take them a long time to find satisfaction because they are involved in such protracted litigation. What has happened since the 2015 reforms is that the path to getting satisfaction does not involve complex litigation. Homeowners are able to take advantage of a home warranty. They also have the ability to access the Residential Recovery Fund, which was created in 1999. There is information on the Residential Recovery Fund (Exhibit I) on the Nevada Electronic Legislative Information System. More homeowners are getting more satisfaction faster without having to go through a Chapter 40 case.

Assemblywoman Torres:
It seems to me that you might not know there is an issue or a procedure for that until significantly later. For example, to be transparent, I did not know that this type of issue existed. If I had owned a home for many years, I might not have realized that it was an issue with the building of the home until I had already lost that time. I might not have been able to go to the recovery fund at that point. I do not know that we have many cases that have qualified for the home warranty at that point. That is my main concern.

Assemblywoman Peters:
Unlike my colleague, I have a background in engineering, and when I bought my first home, I recognized that it was in a historic riparian area and I pulled the soil report. I looked through the soil reports and made an assessment based on best understanding of the way that the mitigation was handled in the 1970s. However, that is not always the case. I saw my grandparents drilling pylons into bedrock because of their situation. We know that soil testing happens and that an engineer is involved, but what are the requirements for that? Who is responsible for the determination that the soil is appropriate for the housing development? What kind of compaction is required—or mitigation that may be required—for that soil? Where is the liability?

Joshua Hicks:
The soil test is done according to building codes. It is done by a licensed expert such as Mr. Marsh. They conduct testing and reporting, and the home does not get sold until all of that passes muster. With respect to liability, if that report does not end up being correct or

there is something else that is not done to code, the builder will be the one who is looked at. They relied on that opinion. They can be responsible for that. That is how some construction defect cases get filed.

Chairman Yeager:
We will go down to Las Vegas, and I will ask you to limit your comments to two minutes. We have 45 minutes, and I want to get through as many people as possible.

Nat Hodgson, Chief Executive Officer, Southern Nevada Home Builders Association:
To my knowledge, Assembly Bill 125 of the 78th Session is working. I think the focus should be on educating the homeowner on the rights and protections that they have already. Assembly Bill 440, which is scheduled for tomorrow morning, outlines homeowners' protections and processes available to them. My goal as chief executive officer of Southern Nevada Home Builders Association (SNHBA) is to do everything in my power to educate homeowners of their rights and to encourage continued respectful dialogue and speedy resolution of legitimate issues between homeowners and their contractors.

The first step is always to exhaust the builder's processes. I strongly encourage all homeowners who have concerns or issues with their homes to work with the builder and utilize their process for requesting service. An example of internal processes is the online submittal portal that almost all builders have so requests do not fall through the cracks and management can stay on top of it to make sure it is done in a timely fashion. I received a few calls myself on issues that I personally have been able to assist with. All of those issues were brought to my attention with the help of the builder. In most cases, the homeowner was unaware of the existing contractors' and Nevada State Contractors' Board's processes and their rights regarding noncompliance. We, the Association, provided stickers to put in homes that outline pertinent contact information and outlets if the homeowner does not feel the issue has been resolved or they do not know all of their options.

I am personally committed to resolving any and all issues that come to my office and will continue to find resolutions between homeowners and builders. However, when homeowners do not feel like their issues have been resolved to their satisfaction, one thing that has not been talked about at all today is that they can file a claim, free of charge—which I hope is far and few between—with the State Contractors' Board, who will investigate the issue and issue a notice to correct if warranted. Your last resort before litigation—and I am not going to touch on litigation because we have a whole step before we go there—is the Contractors' Board, where there is no cost to the homeowner to file a complaint for noncompliance, nonresponsiveness, or workmanship issues. I want to stress that this should be the last resort, but—I proudly served on that Board from 2008 to 2012—it is a model agency that is there to protect the public.

For contractors who do not comply with the State Contractors' Board's notice to correct, owners of a single-family residence have had access to the Contractors' Board recovery fund since 1999, where homeowners may be reimbursed from these funds when their issues are not resolved. This fund is fully funded by good, licensed contractors who pretty much pay

for the bad contractors. The Residential Recovery Fund was established by Assemblywoman Buckley just for this reason. A few states have adopted this model, and, in the case of Pennsylvania, it is currently looking at adopting this model. The Nevada State Contractors' Board is proposing a bill that will actually raise the limit per homeowner and per aggregate, which is in the homeowners' best interest. From my work on the Contractors' Board and over 25 years in this industry—I served as one of the three board members on the recovery fund from 2009 to 2012—I know that the fund is a backstop and that it is working. Other than the Summerlin Energy solar company's bankruptcy in 2017, there has not been an increase in complaints filed, and the recovery fund has not been decreased since the passing of Assembly Bill 125 of the 78th Session. The current law is working as intended, and homeowners have accessed many processes in place today to resolve the issues. Rolling back Assembly Bill 125 of the 78th Session is not in Nevada's best interest.

Chairman Yeager:
Do you know if going to the Contractors' Board stays the six-year statute of repose to file a claim?

Nat Hodgson:
As far as the stay, you have the right to file from day one after closing up to the four years. To my knowledge, as long as you are within the four years, if the process and investigation take six months for whatever reason, and then you have to go to the recovery fund a year later, you are still in the four years of substantial completion.

Janet Love, President, Southern Nevada Home Builders Association; and President, Story Book Homes, Las Vegas, Nevada:
I have been personally involved with all the good things that the SNHBA and their charitable arm do. I have been a Nevadan for 17 years as of last week. I am also the president of Story Book Homes, which is a private builder here in the Las Vegas area (Exhibit J). We are locally owned and we employ 27 employees, and we have five communities open and are looking to open two more this year. Story Book is a family-owned business and we reinvest in our local community. One of our most recent charitable efforts was a $500,000 donation to a follow-up clinic for kids who suffer from cancer and have gone into remission, but still suffer those side effects throughout their adult lives.

As a private builder, we have tried to position ourselves in specific niches. Obviously, here in the Las Vegas Valley, affordability is becoming an issue. We have really tried to focus on affordable homes, especially on infilled parcels. This is our way to try to compete with the larger builders. We are currently building homes in the area of Tropicana Boulevard and Boulder Highway, for those of you who know the area. We have new, detached, single-family homes available in the low $220,000s. We have seen homeowners who have been outbid in the resale market. They know they cannot afford the costly repairs they may see in these resale homes. They are excited when they sign a contract with us because they know that home is theirs. That is the American dream of home ownership. In order to fulfill that dream, we must keep homes affordable. While we found a niche for ourselves as a private, small-local builder, it does not insulate us from competition with other builders.

We compete for sales, trades and labor to build our homes, as well as for land. We do not have the volume to leverage, and cost increases affect our bottom line quickly.

We at Story Book are proud of our homes. While everything may not go perfectly, we are here to service our homeowners. We are very proud that they are our homeowners and that they have chosen us to build their homes. We have been here for 16 years, and we continue to be here for our customers. I would like to add that I spent 15 years at a larger public builder here in Las Vegas, and they had the same philosophy, that we service the customers. We hear their claims and go out and see what the issue is.

Testifying this morning is very personal for me and my family. I am in home building and my husband also works for a local city. We rely on home building and the construction industry to support our family, as do many others. We, as an industry, are proud of the reforms we worked so hard to implement in 2015. Overturning those provisions as outlined in Assembly Bill 421 will hurt small businesses like Story Book, and may ultimately hurt my family and future homeowners. We ask that you please vote no on Assembly Bill 421.

Jim Rampa, Director, Customer Service, Pardee Homes, Las Vegas, Nevada:
Assembly Bill 125 of the 78th Session allows for speedier and more direct resolution of any individual's issues without the lengthy legal battles that instead stymie everyday livability for all residents in the community. For example, homeowners who contact the builder with any concerns receive an immediate response from our customer care teams that are ranked among the highest in the industry. Conversely, homeowners who contact lawyers unwittingly put all their neighbors in a class action scenario that can take years to resolve while receiving no help or assistance in taking care of the original problem. In addition, these legal proceedings take homeowners out of work for additional inspections, meetings, lawyers, and other administrative responsibilities related to the litigation, while also unnecessarily tarnishing the reputation of the builder who would have been happy to resolve the issue directly.

Furthermore, at Pardee Homes, our commitment to our homeowners' satisfaction reaches far beyond the initial first year of the warranty. In fact, for up to ten years from the close of escrow, a homeowner is welcome to call Pardee Homes and set up an appointment for an evaluation of any needed repairs. If the home is within four years, the director of customer service, me, makes the decision to repair or not. If the home is past the four years and up to ten years—and possibly beyond—the director and the vice president of construction make that decision. The guidelines for Pardee Homes' decision to repair are simple: if something was installed improperly, we repair it. It is as simple as that. Pardee Homes has exceeded many homeowners' expectations by following this process, and they are often surprised that we would complete the repairs when their homes are eight or nine years old. In my 15-plus years with Pardee Homes customer service, I have seen that our homeowners are not only thankful for our standing behind the homes that we sell, but they are also appreciative and astonished that we would come back and do repairs to their homes even if it is past the one-year time frame. At Pardee Homes, we simply do the right thing. It is our core value, and we will continue for generations to come.

Keeping Assembly Bill 125 of the 78th Session is not only good for the homeowners, it is good for the reputation of the entire building industry, as well as the city. I am on the front line as the director, and I deal with a lot of homeowners whose houses are past the ten-year mark. They are very happy that we come back to make their repairs. All we ask is for the opportunity; they just need to call us.

Josh Griffin, representing Nevada Subcontractors Association:
We are opposed to Assembly Bill 421. My main purpose is to make a couple of introductions and to talk about some specifics of the industry and who the Nevada subcontractors are. There are a couple of terms that have been used a lot that need more attention. One is the notion that a code violation is the minimum and that it should be the only reasonable standard for what is a defect. The bill from 2015 currently defines Chapter 40 issues. A code violation has to be part of the narrative, but it is really difficult to make it the only standard. I do not know that anyone would universally agree that it is a minimum standard. Some would say it is a perfect standard. The code does not allow for a lot of leeway.

I will give you a couple of examples, although there are subcontractors and builders who know this better than I. Your code requires a perfect 12 inches of spacing on your framing—we will just say that is a code standard—but in reality human hands are building it, so it may be 12 1/2 inches. It may be in its purest sense a code violation, but it is by no means a construction defect. What currently sits in statute is that code violations are part of a narrative. They need to be considered and they need to be addressed, but everything that is a code violation is not a defect. If anyone is bored this weekend, go through your house with a copy of the building code, and I bet you will find code violations, which would be a defect if this bill passes.

Having worked on this issue over the last 10 or 15 years, we tried to find a healthy balance. What is in practice now is a blend of all kinds of things like what poor workmanship is and what a code violation is. It is a little concerning to be overly dismissive. I am not suggesting that anyone is being dismissive, but to gloss over what is a reasonable standard is wrong. It is a very hard one to meet when the code requires a certain amount of perfection. With that said, the subcontractors are all of the small businesses that make up the components of the construction industry, like framers and roofers.

Kelly Gaines, President, Nevada Subcontractors Association:
I am here to state my opposition to Assembly Bill 421, the bill that is being presented to change current construction defect laws. The Nevada Subcontractors Association represents close to 150 small businesses that are owned and/or operated in the state of Nevada. Our subcontractors make up the vast majority of residential new construction in southern Nevada. They are also responsible for employing thousands of Nevadans across the state. The passage of Assembly Bill 125 of the 78th Session in 2015 saved many of these businesses and jobs in the construction industry. It now allows the industry to focus on quality work and to follow a policy put in place for fair due process in legitimate construction defect claims. The passing of Assembly Bill 421 would be going back to previous construction defect laws.

This would hurt our small businesses, but more importantly, the employees who are also homeowners and constituents of our communities.

I am proudly wearing this teal-colored shirt today—which is the Nevada subcontractors' logo color—representing our members' businesses and standing alongside the people wearing the same shirt that you see in this room and in the Grant Sawyer Building. Together we represent thousands of Nevadans who will be negatively impacted by the passing of A.B. 421.

I came to the United States 38 years ago as an adopted child from South Korea, raised by a mother who was a nurse and a father who was a construction worker. I am honored to be here today helping the same industry that has provided for me and my family throughout my life.

Wendy Caraveo, Director of Estimating, Colvin Construction, LLC, Las Vegas, Nevada:

I work for Colvin Construction in Las Vegas, and I have worked in construction for 12 years. I am here to oppose Assembly Bill 421. I oppose it because it impacts blue collar workers. I see Assembly Bill 421 as being a career stopper. Prior to Assembly Bill 125 of the 78th Session reform, I personally spent hours, days, and weeks searching through old paperwork that had been in a dark room for over seven years, only to find out the case had been settled. The case was settled, but not because of the paperwork that we provided. Since I spent so much time searching for old information, it was hard for me to learn new things to keep building my career.

Assembly Bill 421 prevents us from growing as a company and me as an employee. I am a second-generation construction worker. My dad has worked in construction since I was a little girl. With his hard work and willingness to move forward, he provided a great life for us. Since the Assembly Bill 125 of the 78th Session reform in 2015, I have had the time and the ability to learn, develop, and build my career. At Colvin, I started as a production coordinator. I moved up to a junior estimator, then a senior estimator, and now I am director of estimating. I love the construction field because it gives women the same opportunity for wages as for men and to learn anything that we want about that field. Our company is looking for ways to expand and have more positions for women as we grow. We pride ourselves in our customer service and the quality of all our work.

When there is a problem, we immediately fix it. We look through soil reports for sulfates, chloride, and expansive soils because a house cannot pass if we do not meet the criteria. I know there may be something that accidentally slips through, but I also know our slabs will not pass if we do not meet all standards, if we do not take the time to put in encapsulated cables, seal the slab, or put down Visqueen so the water does not go through the slabs.

Tom Burns, Chair-Elect, Las Vegas Metro Chamber of Commerce; and Board Member, Nevada Independent Insurance Agents:
I am the President of Cragin & Pike Insurance. On behalf of the Las Vegas Metro Chamber of Commerce, we are here in strong opposition to Assembly Bill 421. We believe this bill will increase the cost of home prices and hinder the affordability of homes for many Nevadans across the state, especially in Reno and Las Vegas where the average cost of homes has been increasing over the last several years. I can speak to that personally. My son is now a proud, new homeowner in Reno. He bought a 1,488-square-foot home for $394,000. I do not find that number to be affordable for a lot of families, so I have a concern about driving up the price of homes.

As the state's largest business association, our members employ 23,000 Nevadans. We need to ensure that we do not adopt legislation that will keep increasing the cost of homes. We believe the current laws allow homebuilders and homeowners to address construction defect issues in a timely manner and resolve issues effectively. We believe that the proposed changes will take us back to a process that results in costly litigation, hinders homebuilders' ability to address concerns that homeowners may have, and the untimely manner of their issues being expedited. For these reasons, the Chamber and the Nevada Independent Insurance Agents oppose Assembly Bill 421.

Jake Lasike, Fleet Manger, Hirschi Masonry, Las Vegas, Nevada:
I have been a southern Nevada resident for most of my life. I have a beautiful wife and a family of four children who have lived in southern Nevada most of their lives as well. My father was an immigrant to this county from the Kingdom of Tonga. My family immigrated to the United States for the possibility of growth and the freedoms we enjoy. We have worked hard to become self-reliant and continue to pursue growth opportunities. I am here today to oppose Assembly Bill 421, which would change our construction defect laws.

Hirschi Masonry has provided for me opportunities for growth within my career; amazing benefits for my family like health, life, accident, dental, and vision insurance; paid time off; and has allowed me to support my family and save for retirement by offering a 401K. I am proud to work in the construction industry in southern Nevada and proud to work for Hirschi Masonry. The growth that construction provides our great city is a huge part of why our city continues to outpace the nation and attract large corporations to relocate here. There are thousands of jobs provided by the construction industry that help strength our city.

Current laws have allowed my company to effectively manage construction defect claims and obtain the necessary business insurance at an affordable premium to have the coverage needed and required to responsibly operate and run our business. Assembly Bill 125 of the 78th Session has helped to keep our overhead down and, in turn, keep housing affordable while providing jobs to many southern Nevadans. Assembly Bill 125 of the 78th Session has allowed us to quickly inspect each home, identify any defects, and work with homeowners to schedule and make satisfactory repairs that are needed (Exhibit K).

Assembly Bill 125 of the 78th Session has helped to keep the dream of buying a new home affordable and within reach of most southern Nevadans by eliminating massive lawsuits and lengthy construction defect litigation that would increase subcontractors' and contractors' overhead substantially through increased insurance premiums and costly litigation, thus increasing the cost to build and purchase a new home. Assembly Bill 125 of the 78th Session has allowed insurance carriers to stay in our market and to offer great insurance products that allow homeowners and business owners to have peace of mind knowing the business owners can afford to stay in business and potential homebuyers to purchase a new home. Assembly Bill 125 of the 78th Session has also created stability, as the same subcontractor or contractor that originally performed the work will still be in business to quickly and effectively repair any defect.

Assembly Bill 421 will substantially increase the cost of a new home by increasing the cost of subcontractors' and contractors' overhead in obtaining quality insurance and managing construction defect claims with lengthy and costly litigation. It will slow the housing market and the construction industry in southern Nevada. Subcontractors and contractors may be forced to close their doors and no longer offer the great employment opportunities enjoyed by thousands of southern Nevadans. The company that performed the work may not be in business to make the repair should a defect arise because the cost and overhead created by Assembly Bill 421 will be too high. If this happens, nobody wins, and the homeowner is left with no one to make the needed repairs.

In closing, I am proud of working in construction and to be a part of building homes for other families. The best way to keep businesses like Hirschi Masonry and others running strong is through quality construction and a quick response to fixing problems. Assembly Bill 125 of the 78th Session provides a responsible tool for our industry that protects homeowners and allows business owners to provide quality employment while keeping construction costs down. Assembly Bill 421 does not. It will slow the housing market and our local economy in southern Nevada by creating increased overhead and costs to business owners. It will not allow homeowners a quick and responsible repair when a defect arises. Homeowners are our customers, and we want to take care of them.

Andrea Gould, Manager, Focus Companies, Las Vegas, Nevada:
We operate in both northern and southern Nevada. We have over 1,500 employees. I have lived in Nevada and worked in the construction industry for over 19 years. I am here to oppose Assembly Bill 421, which would change our construction defect laws.

I am a Nevada homeowner who was a part of the construction defect class action lawsuit ten years ago and have witnessed firsthand that the only people who gained anything from the construction defect process prior to Assembly Bill 125 of the 78th Session being passed were the attorneys. I can tell you from personal experience that before Assembly Bill 125 of the 78th Session, the construction defect process was long and drawn out. It prevented the contractor and the subcontractors from accomplishing what most homeowners wanted: to fix our homes. Instead, we received a small settlement, a damaged house, and the unhappy experience of buying our first homes.

Working in the construction industry has allowed my husband and me a means to provide a future for our children. The success of our construction company is extremely important to the 1,500-plus employees that we have and their families who depend on them. The best way to keep these businesses running strong is through quality construction and providing a quick response to fix problems, which Assembly Bill 125 of the 78th Session helps the industry to facilitate. Homeowners are our number-one customers and insuring they have safe, quality homes is our motivation.

The proposed language in Assembly Bill 421 is bad for the construction industry and bad for the state of Nevada (Exhibit L). I urge you to vote no.

Jesse Haw, President, Hawco Properties, Reno, Nevada:
My grandfather built houses in Henderson in the 1950s. My father built homes in Winnemucca in the 1980s, and for a short period of time, we all worked together in Reno. In 2002, we had over 200 employees.

It was a time when companies were being sued regardless of how well they took care of the homeowner. Our insurance reflected this, and our insurance premiums escalated from $47,000 a year in 1997 to $750,000 a year in 2002. It was at that time we decided to stop building.

At first, I confess, it was easy to lay off people I did not know well. They had just started; they had not been with us long. But by the end of that fateful day, I looked into the eyes of these people who were more than employees. They were friends; they were kin. They were people whose houses I had been to, and people whose children's birthday parties I had attended. In the end, I had to save my family and our business by letting go of some of the best people I have ever known.

And then the recession came. These were dark days if you were in construction. These were dark days for most of Nevada. The phone did not ring. Emails were not sent or received. Unemployment was double digits. It was like living in a Steinbeck novel. We simply despaired.

Finally, in 2012, I bought a lot. It was one of those that had been foreclosed on so I paid less than half of what it cost to build on it. It allowed me to take the plunge and build a house. I was excited, nervous, and ready to do something. On the first day, I drove over to the lot, and a man in his early sixties was digging the foundation. He saw me and did something I had never seen before: he stopped. He got off of his tractor and walked over to me. He asked if I was the contractor. When I said, "Yes," he paused, looked away, and when he looked back, he had tears in his eyes. He said, "Thank you. Thank you for letting me go back to work again. You do not know what this means to me and my family." And then he went back to work. He got back to his life. Slowly, all of Nevada did the same thing.

In 2016, my brother and I built the first subdivision in our family in over 14 years. This was directly attributable to the changes in Chapter 40. I want to thank this body for supporting those changes and giving our family a chance to build homes again.

I have been told that some lawmakers want to make changes to Chapter 40 in order to go after public builders. I am here to tell you that the private builders will be impacted the most. My stock price does not go down due to a frivolous suit—we simply go out of business.

In any industry, there are bad actors. If builders do not fix the homes they construct, they should be fined or have their licenses revoked. If they have done something wrong, a homeowner can still sue. If they win their case, they get attorney's fees. If a home has an issue, we must encourage builders to fix the problem instead of diverting to a time when homeowners were canvassed to join a suit. We have seen that with the changes put in place four years ago. Homeowners are getting their homes repaired faster than they have in years. Is this not the main goal? Families want their homes fixed and builders want to fix them. We should encourage that. You can encourage that by supporting the homeowners and the workers in the state of Nevada and keep Chapter 40 working well.

Victor Rameker, Owner, Desert Wind Homes, Reno, Nevada:
Prior to Assembly Bill 125 of the 78th Session, the definition of construction defect was so broad that we received construction defect claims on an almost-ten-year-old home—which had been foreclosed on many times—which included items like paint overspray on windows, front yard irrigation, baggy carpet, exterior iron fence rusting, and garage door problems. Several years ago, we received a Chapter 40 notice on an eight-year-old home that included a picture of an empty smoke detector bracket. The smoke detector had been there when we closed the home or we would not have received the certificate of occupancy issued by the building department. The only logical conclusion was that somewhere in the eight years the homeowner had taken down the detector to change the battery and never put it back. Yet this was listed as a construction defect.

More recently, Desert Wind Homes took over a half-completed townhome in 2017. The project was halted by the previous developer due to the 2008 housing crisis. When Desert Wind Homes became involved in the project, the HOA had already settled a Chapter 40 lawsuit in which the homeowners received $450,314 of the total $900,000 settlement, barely 50 percent of the total settlement. The lawsuit was started by the HOA without the consent of all 82 homeowners, as Chapter 40 claims typically do for attached communities. They do not inspect all 82 homes to come up with a detailed list of defects in each house. Instead, they inspected a small sample size, only 10 homes of the 82 in this case, and then speculated the percentage of the 82 homes that had defects, giving no specificity as to what defects were in each home. By the time the settlement was done, the two board members who had initiated the Chapter 40 were gone and, as of today, almost three years later, the money still sits in the bank account with none of the repairs done. The Chapter 40 attorneys took their fees and gave little or no guidance to the homeowners on how to proceed. How do those homeowners equitably and fairly begin the repair process? Which homes have the defects? Is there enough money even to do the repairs? Who makes the final decision?

Furthermore, many of those homeowners were unaware of the Chapter 40, let alone the settlement that had been reached. Despite having settled the Chapter 40 lawsuit almost three years ago, the HOA manager still does not receive calls from homeowners requesting any Chapter 40 monies for repairs. This is a case of a solution in search of a problem. How about the new homebuyers who have bought in that development since that settlement? Should they have been told that they are possibly buying a unit with potential defects that have not been repaired? Whose obligation is it to disclose that to them? Where are the consumer protections in this law?

Since the passage of Assembly Bill 125 of the 78th Session, our industry has seen new insurance providers come to our market. Insurance rates have declined, which resulted in a greater pool for subcontractors to use. It has given us the confidence to go back to building more affordable multifamily projects. Insurance providers will leave our market if you pass this law. The pool of subcontractors will shrink if you pass this law. Multifamily projects will become uninsurable. This will make affordability worse in our already unaffordable market. We are not perfect builders, we make mistakes and will continue to make more in the future, but to the extent that we make mistakes, we want to repair and make them right. We want happy owners. Please oppose Assembly Bill 421.

Teresa N. DiLoreto, **Partner, Paradiso Communities, Reno, Nevada:**
I am a second-generation homebuilder. My family has been building homes in Nevada since 1978, 41 years. In 2016, together with my partners, we started a new home building company, Paradiso Communities. Recognizing the need for obtainable housing, our mission is to be a part of the solution for those families looking to achieve the American Dream.

I have the distinct opportunity to be on the front lines of every new home purchase at Legacy Pointe, our Lemmon Valley community. I can tell you story after story about the impact we are making and the way we are able to change lives by working every day to keep the base prices of our homes under $300,000.

With limited time, I can only share one story about a University of Nevada professor, a single father with young twins who spent years living in a one-bedroom apartment. The twins slept in the only bedroom while dad was on the couch. After searching for several months for the right home at a price he could afford, he came to Legacy Pointe. At our contract appointment, he broke down in tears. I asked him if he wanted to reconsider. He apologized and said, "No, no. Teresa, I cannot thank you enough. All my children want is their own rooms, a backyard, and a home to call their own." He shared that they would draw pictures and make wish lists of what their home would look like and what it would include. He said, "With your prices, you have made that possible for us." Following the contract signing, he said, "I am not going to tell them until we have the keys. I want to surprise them." I was there when those 9-year-old twins walked into what they thought was another rental house. Hanging in their rooms, however, dad had framed the drawings that designed the home they had wanted him to find and the wish lists they had made while watching HGTV, and that is when they realized the home was theirs. As you can imagine, the tears really poured. We do

not just build homes, we build relationships. Lifetime memories are made under the rooftops that we build.

This legislation, if passed, will be yet another obstacle in our ability to keep our prices down. There is nothing like watching the devastation and defeat in the faces of families that have to walk out the doors of our sales offices knowing that purchasing a home for their family is no longer an option.

Chairman Yeager:
We are going to take testimony from the three in Las Vegas, and then come back up to Carson City to the three here, and that will probably be all the time we will have for opposition testimony. I will give folks the opportunity to stand up and be recognized. We will now go to Las Vegas to whoever would like to go first.

Rebecca Fountain, Member, Latin Chamber of Commerce; and Owner, Core Building Group, Las Vegas, Nevada:
On behalf of the thousands of members of the Latin Chamber of Commerce, I would like to convey my strong opposition to Assembly Bill 421. According to a report published by Stanford University's Graduate School of Business titled, "2018 State of Latino Entrepreneurship," 50 percent of Latin-owned "scaled" firms—firms with $1 million or more in annual revenue—are in the construction industry. Additionally, we know the path to entrepreneurship often runs through the construction trades. We have many stories of members who started as electricians, framers, carpenters, plumbers, or other trades that use their experience, hard work, and education to start a business. These business owners use a higher percentage of their profits to provide for their family, according to the same Stanford study.

Assembly Bill 421 reverses many of the necessary reforms of the construction defect law found in Chapter 40. Those reforms included a more specific definition of a defect, offers of judgments that realign the incentives for attorneys, and the standing of homeowners' associations, among other things. These reforms provided much needed stability to the homebuilding construction industry and offered entrepreneurs, as well as homebuyers, faster resolution of disputes and lower costs of dispute resolution.

Governor Sisolak used the word "crisis" referring to the state of affordable housing in Nevada. Since the 2015 reforms, we have seen a sharp increase in the number of permits pulled for attached housing for purchase. Condominiums and townhouses are often priced at levels that allow the dream of homeownership to become a reality for many of our members. Should Assembly Bill 421 pass and repeal the reforms of 2015, we are concerned that entry-level housing will be thrown into an even deeper crisis than Governor Sisolak described.

Mr. Chairman and members of the Committee, on behalf of the Latin Chamber of Commerce, please reject Assembly Bill 421 and allow the reforms that have provided

a pathway for Hispanic entrepreneurship and affordable home ownership options to continue to work.

Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce:
We represent about 800 member businesses, many of whom are private and family-owned builders here in our community. We, too, echo a lot of the sentiments that our colleagues here from the Latin Chamber of Commerce have shared.

We are also in opposition to Assembly Bill 421 (Exhibit M). Among a number of concerns is the issue of affordable housing to meet the demands of our community, especially for our middle-income and young workers. In addition, we are concerned about the future of our builder-member businesses, all of the folks they employ, and their families.

The fact is that this bill will increase litigation and insurance costs for our builders as we have heard today. It will also discourage some of our current and planned construction projects from proceeding at a time when we desperately need more of a diverse workforce and labor pool in our community, many of whom moved their families from out of state to Nevada and need housing. We urge you not to proceed with this bill.

Carlos Gomez, Director, Business Development and Membership, Latin Chamber of Commerce, Las Vegas, Nevada:
I am here in opposition to Assembly Bill 421. The reason is that I have been involved with construction for 20 years, and I know how difficult this burden is on small contractors. It is difficult to deal with attorneys and litigation. There is too much paperwork in order to be in compliance.

On behalf of the Latin Chamber of Commerce and its over 1,000 members, we oppose Assembly Bill 421.

Aaron West, Chief Executive Officer, Nevada Builders Alliance:
On behalf of the over 850 member companies, representing tens of thousands of Nevadans, we are here in opposition to Assembly Bill 421. I wish we could get everyone on the record, both here and in Las Vegas.

With respect to general liability insurance, in 2014 there were two carriers in the state that were writing general liability for construction. Right now, after the reforms, we are up to eight. We have seen significant decreases. As a result of that, we actually have more contractors who are insured. There is a lot of conversation this session about workforce housing, affordable housing, and obtainable housing. We have seen significant increases of what would be deemed as workforce housing, or attached product, in the last couple of years. We are really concerned about the impact going forward if Assembly Bill 421 were to be passed.

Chris Barrett, Vice President, Q&D Construction; and President, Nevada Builders Alliance:
We are a large company. We are, at this time of year, over 500 employees and will quickly reach 800 employees this coming construction season.

We are very concerned about what is in this bill and we oppose it. We do a lot of work for the people behind me in this room, and in this industry. We build homes, buildings, hospitals, airports, roads, bridges, et cetera. We have a huge exposure out there. When some of the things in this bill happen and the people bring us work, we will simply say, "No, thank you. We cannot have the exposure again that happened to us prior to 2015."

Mark Turner, Board Vice President, Nevada Builders Alliance:
As a summary of what we have heard today, the conditions that were present prior to the 2015 reforms did not go smoothly. There were a number of problems with the processes that involved litigation. This particular bill seeks to take a lot of those conditions that were in place prior to the 2015 reforms and put them back in place. That would result in the near impossibility of obtaining liability insurance. If you did obtain it, the cost would be exorbitant. I can remember, in 2005 and 2006, that I had asked a carrier for a quote to build seven homes that were going to be about $500,000 to $700,000 apiece. It was $248,000 for a maximum of $1 million of coverage. That tells you there is a problem in this state. There is a problem when insurance levels get that high. We do not want to see those conditions return. The protections that are in place right now very adequately address consumer concerns. There will always be inherent types of situations like you heard today that are sad situations. Unfortunately, you cannot avoid every one of them with one law; there is no way to do it. We urge you to take action and not roll back the reforms of 2015. Let us keep the environment for affordable housing in place and affordable insurance from a liability insurance standpoint.

Chairman Yeager:
Here is what I want to do. We do not have time for additional opposition testimony. If you are opposed to the bill and did not have a chance to come forward to speak, I would ask that you stand up at this time, both here in Carson City and those in Las Vegas. We will give the cameras a chance to pan around to make sure we capture this on the video for archiving. [Broadcasting cameras panned across the audience several times.] I will ask you to be seated, but I will also note that there are overflow rooms as well. I want to apologize that we did not have enough time for everyone to come up to testify. Our legislative business is limited to 120 days and we are more than halfway done, so we do not have time to move beyond our time today.

I do want to let folks know that I have about 26 sign-in sheets that have names on them with positions. This will be made part of the official record as well. Just because you did not have a chance to speak, I did not want you to think that the fact that you were here and your position on the bill would not be noted for the record.

With that, I will close opposition testimony and open it up for neutral testimony. We have two individuals who are neutral, but let me know if there is anyone else in the neutral position.

Gennady Stolyarov II, Lead Actuary, Property and Casualty, Division of Insurance, Department of Business and Industry:
I want to clarify that the Nevada Division of Insurance, as an Executive Branch agency within the Department of Business and Industry, is neutral on the policy substance of Assembly Bill 421. We have before you a technical amendment (Exhibit N) that, hopefully, you would be able to agree with no matter what your position is on the policy questions of this bill. This technical amendment fixes an error in the law that has been present since Chapter 40 was enacted in 1995. Both the current language of NRS 40.650 and the proposed language of section 4, subsection 3 of Assembly Bill 421 would not accomplish the intended purpose of requiring homeowners who are claimants in construction defect situations to pursue claims under the original builders' warranty of the home. That original builders' warranty is a promise by the builder to remedy any issues pursuant to the terms of the warranty. But the warranty is not an insurance product, and it is not regulated pursuant to Title 57 of the *Nevada Revised Statutes*. In fact, there is no insurance product, or other product, regulated pursuant to Title 57 that would offer homeowners any direct first-party coverage from an insurer in an event of a structural construction defect. The term "homeowners' warranty" that is used in Chapter 40 technically does not exist as an insurance product. *Nevada Revised Statutes* (NRS) 40.650 references the range of statutes, NRS 690B.100 to NRS 690B.180, which actually pertain to a different product called "insurance for home protection." It used to exist up until the 1990s, but it has not been offered in Nevada since service contracts came into being in 1999, when NRS Chapter 690C was enacted. One technical reading of the law as it stands is that the conditional "if" clause with which NRS 40.650, subsection 3, begins is not applicable because there are no such insurance policies in existence right now pursuant to NRS 690B.100 to NRS 690B.180.

That may be the more favorable interpretation for homeowners because there is a colloquial use of the term "home warranty" out there that actually refers to service contracts. Service contracts are not able to cover structural components of the home. They may cover appliances, plumbing, or electrical systems, but pursuant to NRS Chapter 690C, service contracts are deemed not to be insurance, and they are deemed not to be warranties, although some people may colloquially call them warranties. They are prohibited from offering structural coverage for components of the home.

A possible unintended consequence of leaving in the current definition of a homeowners' warranty would be that some in the field who are not experts in these distinctions in insurance laws might interpret the requirement to file a claim under a homeowners' warranty to be a requirement to file a claim under a service contract. However, the service contract provider will necessarily reject that claim because they are prohibited from covering structural aspects of the home. This would essentially be, from everyone's standpoint, a needless protraction of the process for a homeowner to seek remedy.

All our technical amendment does is clarify the intent for the homeowner to seek recourse under the builders' warranty rather than any insurance product or service contract. I will point out by way of historical background that, in 2017, in relation to Assembly Bill 462 of the 79th Session, we brought this exact same amendment to Assemblywoman Carlton and she understood what it was trying to do and she recognized it as a friendly amendment to the bill.

Chairman Yeager:
I will note for the Committee members that Assembly Bill 462 of the 79th Session was also a construction defect bill that was heard in this Committee that ultimately did not advance out of the Committee. That is the bill that he is referencing in terms of this amendment also being presented in 2017.

Assemblywoman Backus:
This is the area of law where I practice. You said some things that shocked me, so I want to make sure it is clear. There are different things that you are talking about. My understanding of these building warranties, under the 2-10 Home Buyers Warranty, was that it was acquired by the builders to secure insurance when they would do their own warranty program in-house for one year, common repairs; then we would have the 2-10; and the ten-year would provide for structural warranty, if you could ever get it. I probably tendered over 300 of those and I have never gotten acceptance.

I am a little confused why you are now saying that those builder warranties do not necessitate insurance when, in fact, we would tender it regardless and that it is under insurance. It has been a mandate now since 2015 under Assembly Bill 125 of the 78th Session.

Gennady Stolyarov:
What you are talking about is not regulated as an insurance product. It is a contract that the builder has with the issuer of the warranty. Essentially, that warranty delineates certain services that the builder will perform in order to make good on any defect issue within the home. This is not the same as insurance for home protection, which that statute, NRS 40.650, currently references. There is not a single company offering insurance for home protection in Nevada right now. Insurance for home protection would, hypothetically, arise if a homeowner—and it does not have to be the purchaser of a new home, but rather for someone who wants coverage for structural issues—went out directly to an insurer and said that they wanted a policy to indemnify themselves if they have a crack in their foundation or some sort of wear and tear. The reality is that there has not been much of an appetite on the market for that kind of coverage. The entities that were offering it back in the 1990s really wanted to offer service contracts, which is why NRS Chapter 690C was enacted. This type of arrangement that you described where a builder and the issuer of the warranty—which is not technically an insurer—make a contract between themselves that the issuer of the warranty will help the builder fulfill its obligations is entirely outside of our jurisdiction and entirely outside of Title 57.

Assemblywoman Backus:
We are on the same page. The clarity that you do not like is with respect to its being an insurance product. I want to make sure that is clear for everyone because it is a third party that is providing the services under 2-10. I know those are nearly impossible. I had a builder as a client who went in to get one. They bought a house back and were told "No," that they had to exhaust all the remedies. This has been a hurdle that has been included under Assembly Bill 125 of the 78th Session where the answer is just, "No, we are not going to do anything."

Chairman Yeager:
I saw a lot of head nodding in the audience when you were describing those different products, so that tells me that we have it right on the record.

We are going to go to Las Vegas for neutral testimony there.

Margi Grein, Executive Officer, Nevada State Contractors' Board:
I am here to express our concerns, particularly with section 9 of Assembly Bill 421. I would like to note for the record that the Nevada State Contractors' Board has not had the opportunity to review the bill and has not taken a formal position. As such, my comments are preliminary and subject to change.

Section 9 seeks to amend NRS Chapter 624 to require commercial general liability insurance as a condition for licensure as a contractor. In doing so, the Board would be required to verify the insurance requirements are met prior to issuing the license and again every two years at the time of renewal. The Board is also given the authority to discipline licensees for failure to maintain the required insurance.

Assembly Bill 421 acknowledges that there are different monetary limits, but still takes a broad approach to the insurance coverage amounts. The bill requires coverage of $100,000 per occurrence and $300,000 in aggregate liability insurance coverage for all licensees with less than $1 million. For licensees with monetary limits between $1 million and $10 million, the coverage increases to $1 million per occurrence and $2 million in aggregate, and for license limits of more than $10 million, both coverage amounts must be $3 million. Assembly Bill 421 does not take into account the various monetary limits. For instance, contractors who apply for a one-time monetary limit increase specific to a single project may be required to make changes to the insurance limits to conform to the temporary, one-time monetary limit.

Additionally, 62 percent of the 9,800 current active licenses have monetary limits of less than $1 million. Of this group, nearly half contain monetary limits less than $100,000. While the Board understands the intent behind the language in Assembly Bill 421, the insurance amounts being proposed are considerably larger than the scope of the projects many of the licensees can lawfully undertake.

Furthermore, Assembly Bill 421 fails to take into consideration that our active license holders are not individuals, but construction entities. Many of our 15,851 active licenses hold multiple license classifications with different monetary limits. Of concern to the Board is the lack of direction Assembly Bill 421 provides regarding the required amount of general liability insurance for contractors holding multiple licenses.

The Board's disciplinary authority is also broadened under this bill. In addition to allowing discipline of a contractor for failure to maintain commercial general liability insurance up to $120,000, the Contractors' Board may impose discipline if a contractor causes injury to persons or property "pursuant to the regulations of this chapter." It is our interpretation that this language is likely a reference to NRS Chapter 40. Thus, a contractor that has a construction defect that causes injury to persons or property can be disciplined by the Nevada State Contractors' Board. However, the Board's existing statute already provides for investigation into workmanship-related complaints up to four years from the date the work is performed.

I would like to address the fiscal impact this bill is likely to have on both the Contractors' Board and its licensees. Every contractor would be financially impacted with the new insurance coverage requirement. Smaller contracting businesses are likely to be hardest hit in coming into compliance, as their operations may not be able to support the additional costs associated with the new requirements. Unintended consequences would be prospective applicants not applying for licenses because they cannot afford the insurance, and smaller license holders going out of business because they cannot afford the insurance premiums, therefore, increasing unlicensed contracting.

Regarding the fiscal impact for the Board, I have submitted a fiscal note for approximately $122,816, which includes a one-time cost of $27,000 in fiscal year 2019-2020 to modify our back office processes, online and physical application processing, and to develop new reports and correspondence to comply with the requirements of the bill. Additionally, the Board anticipates an enforcement cost of $95,816 for each fiscal year based on comparative data of licensees who fail to maintain the licensure bonds, which is approximately 5 percent or 700 licensees. Each investigation takes an average of two staff hours to conduct, thereby reaching the total of $95,816.

Lastly, we fear the implementation date of October 1, 2019, will not be enough time for the Board to make the necessary changes to its back-end information technology systems, as well as train staff on the new requirements, update all forms and applications, and inform the industry of the new requirements to best ensure compliance.

On behalf of the Board, I would like to respectfully request your consideration either amending Assembly Bill 421 to address our concerns or strike that section in its entirety.

Additionally, as part of my testimony today, I would like to give you some data on the recovery fund since it was mentioned. The recovery fund was established in 1999. It was never intended to be a substitute for Chapter 40. Likewise, it was never intended to include

HOAs or multifamily units. If it did, it would only take approximately 12 claims to deplete the entire fund. It was never intended to apply to anything other than a single-family residence. To open up the recovery fund to an additional group of individuals or multiple construction defect cases would essentially bankrupt our fund. Since inception, our licensee assessments have totaled—since we started collecting in 1999—$17,529,520 in assessments. We have had 1,773 claims filed, and the amount awarded totaled approximately $11,776,000. It is interesting to note that, of the claims awarded, an average of 87 percent of the licensees whom claims have been filed against were revoked at the time the claims were awarded. Of the majority of the claims that were filed, and I have provided this information (Exhibit O), 30 percent of those claims were from projects that were abandoned by licensed contractors. Some of those had excessive down payments, but the majority were simply contractors who had gone out of business. Over the past four-year period, of the 272 claims paid, 147 of those were on solar projects, 56 were miscellaneous, 38 were remodels, 13 were claims for new construction, pool contractors had 7 claims, flooring was 5, life safety issues was 2, and landscaping was 4.

Chairman Yeager:
Once the Board has a chance to actually meet, please update us on what the official position of the Board is. I know you are neutral today because that meeting has not happened yet, but once it has happened, please let us know by writing what the Boards' official position will be.

Is there anyone else neutral on Assembly Bill 421? Seeing no additional neutral testimony, I will invite our presenters back up to the table for closing remarks.

Eva Segerblom:
I have just a few points I want to clarify. First, Chapter 40 benefits all homeowners, not just the original purchaser. Anyone who falls within that statute of repose period that owns the home would be available to use Chapter 40, not just the original purchaser.

Second, as part of the statute of repose revision, we are again recommending no statute of repose for fraud—no one should be protected from fraud—and under current law you only have six years for a fraud claim.

Regarding class action suits, the Nevada Supreme Court has been very clear on limiting class actions for construction defect. That was back in 2007. The vast majority of these cases are not class action; it is extremely rare.

The Chairman asked a question about whether making a claim to the Contractor's Board tolls the statute of repose. It does not. The Contractors' Board does not have any authority to order payment, no authority over contractors who are under bankruptcy, or over those who surrendered their licenses. The statute of repose is not tolled making a claim during the four-year time period.

Regarding attorney's fees, I believe they were referred to as "damages." That is not the case. In Assembly Bill 421, we are not seeking to go back to what attorney's fees were before Assembly Bill 125 of the 78th Session. We are seeking prevailing party and that loser pays.

Finally, there was some talk about HOAs not requiring a vote. That is not what the law requires. The law requires a favorable vote of a majority of owners to commence litigation. The suit will be dismissed if that vote has not taken place.

Regarding extrapolation, that is a very detailed standard that the court undertakes about whether HOAs can prove the defects that they are alleging. That is a high-evidentiary standard. The association, as well as anyone who undergoes a Chapter 40 process, has a disclosure obligation under NRS 40.688 that requires anyone in the Chapter 40 process to disclose the Chapter 40 notice, any extra reports, the terms of the settlement if a complaint has been filed, and any repairs that are made. That is the requirement of any individual or association that undergoes the Chapter 40 process.

I want to conclude by saying that the ability to get justice under Assembly Bill 421 is going to make our community stronger, safer, and give all Nevadans a higher quality of life.

Chairman Yeager:
Before I close the hearing, I want to say a few things. I want to indicate on the record how much time we allotted for the various positions. The presentation, support, and questions took 1 hour and 18 minutes. The opposition had 1 hour and 22 minutes. We had neutral testimony for about 19 minutes. Rebuttal was about 4 minutes. The support and opposition ended up with nearly the exact same time.

The second thing I want to say is that everyone in this room, in Las Vegas, and in the overflow rooms shares the goal of trying to make sure the injured homeowners are made whole. It sounds like there is disagreement about how to best do that and whether the provisions that were enacted in 2015 went too far or did not go far enough. I am encouraged that this seems to be the common theme this morning, which is that we are doing right by homeowners who suffer injuries through no fault of their own.

I want to thank everyone for the hearing. I know this is a topic that gets people animated and excited, but I think the hearing was done very professionally. Thank you for making my job easier. It is not always easy to run this Committee, but you showed one another respect. This highlights the best of the legislative process.

[Additional exhibits include a letter of support of A.B. 421, submitted by Teri and Ray Cotham, Private Citizens, Gardnerville, Nevada (Exhibit P); a document titled "The Nevada Housing Market: Prospects for Recovery 2013," by University of Nevada, Las Vegas Center for Business & Economic Research, Lee Business School, prepared for and submitted by Southern Nevada Home Builders Association (Exhibit Q); a document titled "Chapter 40 Alternatives to Filing a Lawsuit," submitted by the Nevada Chapter Associated General

Contractors (Exhibit R); and a packet of letters in opposition to A.B. 421 submitted by various persons (Exhibit S).]

With that being said, I am going to close the hearing on Assembly Bill 421.

Is there any public comment? I will open it up for public comment. Seeing no one for public comment, I will close public comment. Is there anything else from Committee members? [There was nothing.] For the rest of the week, we are going to start at 8 a.m. Tomorrow we have two bills on the agenda. Thursday will likely be an 8 a.m. start as well. We have one bill. We will do work sessions on Thursday and Friday. If Committee members are going to be presenting bills somewhere else on Thursday morning, please let me know so we can determine when to have the work session. Our intent is to work session half of the bills on Thursday and the other half on Friday. My best estimate is that we have about 40 bills that we may have to work session on those last two days. With all of that being said, the meeting is adjourned [at 11:14 a.m.].

RESPECTFULLY SUBMITTED:

_____
Karyn Werner
Committee Secretary

APPROVED BY:

_____
Assemblyman Steve Yeager, Chairman

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a document titled "AB421 Restores Fairness and Safety in Residential Construction," submitted by Ardea G. Canepa-Rotoli, Attorney, representing Nevada Justice Association, in support of Assembly Bill 421.

Exhibit D is a copy of a PowerPoint presentation titled "Statement by Edred T. Marsh, Principal Engineer, P.E. 12149," presented by Edred T. Marsh, Principal Engineer, American Geotechnical, Inc., Las Vegas, Nevada.

Exhibit E is a copy of home damage pictures presented by Colton Carmine, Private Citizen, Reno, Nevada.

Exhibit F is a letter to Chairman Yeager in opposition to Assembly Bill 421, titled "Construction Defect Reforms 2015-2019: The Problem, the Solution, and the Results," dated April 8, 2019, authored by Steve Thomsen, President, and Brian Kunec, Vice President, Nevada Home Builders Association, presented by Joshua J. Hicks.

Exhibit G is a document titled "Nevada Housing Affordability and Implications of Construction of Defect Reform: An Executive Summary," submitted by Brian Gordon, Principal, Applied Analysis, Las Vegas, Nevada.

Exhibit H is a report submitted by Applied Analysis titled "Nevada's Housing Market, Housing Affordability and Implications of Construction Defect Reform," referenced by Brian Gordon, Principal, Applied Analysis, Las Vegas, Nevada.

Exhibit I is a document titled "Highlights and Minutes of A.B. 636 of the 70th Session of the Nevada Legislature—the bill that created the Residential Recovery Fund within the Board of Contractors," referenced by David Goldwater, representing Nevada Home Builders Association.

Exhibit J is a letter dated April 3, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, authored and presented by Janet Love, President, Southern Nevada Home Builders Association; and President, Story Book Homes, Las Vegas, Nevada, in opposition to Assembly Bill 421.

Exhibit K is a letter dated April 2, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, authored by Chad Hirschi, Owner, Hirschi Masonry, submitted by Jake Lasike, Fleet Manager, Hirschi Masonry, Las Vegas, Nevada, in opposition to Assembly Bill 421.

Exhibit L is a letter dated April 3, 2019, to Chairman Yeager and members of the Assembly Committee on Judiciary, authored by Steve Menzies, Focus Companies, submitted by Andrea Gould, Manager, Focus Companies, Las Vegas, Nevada, in opposition to Assembly Bill 421.

Exhibit M is a Position Statement dated April 4, 2019, authored and submitted by Aviva Gordon, Legislative Committee Chairwoman, and Amber Stidham, Director of Government Affairs, Henderson Chamber of Commerce, in opposition to Assembly Bill 421.

Exhibit N is a proposed amendment to Assembly Bill 421 presented by Gennady Stolyarov II, Lead Actuary, Property and Casualty, Division of Insurance, Department of Business and Industry.

Exhibit O is written testimony presented by Margi Grein, Executive Officer, Nevada State Contractors' Board, regarding Assembly Bill 421.

Exhibit P is a letter of support for Assembly Bill 421, to members of the Assembly Committee on Judiciary, submitted by Teri and Ray Cotham, Private Citizens, Gardnerville, Nevada.

Exhibit Q is a document dated February 2013, titled "The Nevada Housing Market: Prospects for Recovery 2013," by Stephen P.A. Brown, Director, and Ryan Kennelly, Economic Analyst, University of Nevada, Las Vegas Center for Business & Economic Research, Lee Business School, submitted by Southern Nevada Home Builders Association.

Exhibit R is a document titled "Chapter 40 Alternatives to Filing a Lawsuit," submitted by the Nevada Chapter Associated General Contractors.

Exhibit S is a packet of letters in opposition to Assembly Bill 421.