
ASSEMBLY BILL NO. 421—COMMITTEE ON JUDICIARY

MARCH 25, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to construction.
(BDR 3-841)

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

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[omitted material]** is material to be omitted.

AN ACT relating to construction; revising provisions relating to the information required to be included in a notice of a constructional defect; removing provisions requiring the presence of an expert during an inspection of an alleged constructional defect; establishing provisions relating to a claimant pursuing a claim under a builder's warranty; removing certain provisions governing the tolling of statutes of limitation and repose regarding actions for constructional defects; revising provisions relating to the recovery of damages proximately caused by a constructional defect; increasing the period during which an action for the recovery of certain damages may be commenced; revising the prohibition against a unit-owners' association pursuing an action for a constructional defect unless the action pertains exclusively to the common elements of the association; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that before a claimant commences an action or amends a
2 complaint to add a cause of action for a constructional defect against a contractor,
3 subcontractor, supplier or design professional, the claimant: (1) is required to give
4 written notice to the contractor; and (2) if the contractor is no longer licensed or
5 acting as a contractor in this State, is authorized to give notice to any subcontractor,
6 supplier or design professional known to the claimant who may be responsible for
7 the constructional defect. Existing law also requires that such a notice identify in
8 specific detail each defect, damage and injury to each residence or appurtenance
9 that is the subject of the claim. (NRS 40.645) **Section 2** of this bill instead requires



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10 that such a notice specify in reasonable detail the defects or any damages or injuries
11 to each residence or appurtenance that is the subject of the claim.

12 Existing law requires that after notice of a constructional defect is given by a
13 claimant to a contractor, subcontractor, supplier or design professional, the claimant
14 and, if the notice includes an expert opinion concerning the alleged constructional
15 defect, the expert or his or her representative with knowledge of the alleged defect
16 must: (1) be present when a contractor, subcontractor, supplier or design
17 professional conducts an inspection of the alleged constructional defect; and (2)
18 identify the exact location of each alleged constructional defect. (NRS 40.647)
19 **Section 3** of this bill removes the requirement that an expert who provided an
20 opinion concerning the alleged constructional defect or his or her representative be
21 present at an inspection and revises certain other requirements.

22 Existing law provides that if a residence or appurtenance that is the subject of a
23 claim is covered by a homeowner's warranty purchased by or on behalf of the
24 claimant: (1) the claimant is prohibited from sending notice of a constructional
25 defect or pursuing a claim for a constructional defect unless the claimant has
26 submitted a claim under the homeowner's warranty and the insurer has denied the
27 claim; and (2) notice of a constructional defect may only include claims that were
28 denied by the insurer. (NRS 40.650) **Section 4** of this bill removes such provisions,
29 and **section 1.5** of this bill replaces the term "homeowner's warranty" with
30 "builder's warranty" and clarifies that such a warranty is not a type of insurance.
31 **Section 4** provides that if a residence or appurtenance that is the subject of a claim is
32 covered by a builder's warranty, the claimant is required to diligently pursue a claim
33 under the builder's warranty. **Section 5.5** of this bill makes conforming changes.

34 Existing law also provides that if a residence or appurtenance that is the subject
35 of a claim is covered by a homeowner's warranty purchased by or on behalf of the
36 claimant, statutes of limitation or repose are tolled from the time the claimant
37 submits a claim under the homeowner's warranty until 30 days after the insurer
38 rejects the claim, in whole or in part. (NRS 40.650) **Section 4** removes this
39 provision.

40 Existing law establishes the damages proximately caused by a constructional
41 defect that a claimant is authorized to recover, including additional costs reasonably
42 incurred by the claimant for constructional defects proven by the claimant. (NRS
43 40.655) **Section 5** of this bill removes the requirement that such costs be limited to
44 constructional defects proven by the claimant.

45 Existing law prohibits an action for the recovery of certain damages against the
46 owner, occupier or any person performing or furnishing the design, planning,
47 supervision or observation of construction, or the construction of an improvement
48 to real property, from being commenced more than 6 years after the substantial
49 completion of such an improvement. (NRS 11.202) **Section 7** of this bill increases
50 such a period to 10 years after the substantial completion of such an improvement.
51 **Section 7** also: (1) authorizes such an action to be commenced at any time after the
52 substantial completion of such an improvement if any act of fraud caused a
53 deficiency in the design, planning, supervision or observation of construction or the
54 construction of such an improvement; and (2) exempts lower-tiered subcontractors
55 from such an action in certain circumstances.

56 Existing law prohibits a unit-owners' association from instituting, defending or
57 intervening in litigation or in arbitration, mediation or administrative proceedings in
58 its own name on behalf of itself or units' owners relating to an action for a
59 constructional defect unless the action pertains exclusively to common elements.
60 (NRS 116.3102) **Section 8** of this bill requires that such an action for a
61 constructional defect pertain to: (1) common elements; (2) any portion of the
62 common-interest community that the association owns; or (3) any portion of the
63 common-interest community that the association does not own but has an
64 obligation to maintain, repair, insure or replace because the governing documents



65 of the association expressly make such an obligation the responsibility of the
66 association.

67 Existing law authorizes a unit-owners' association to enter the grounds of a unit
68 to conduct certain maintenance or remove or abate a public nuisance, or to enter the
69 grounds or interior of a unit to abate a water or sewage leak or take certain other
70 actions in certain circumstances. (NRS 116.310312) **Section 8.5** of this bill
71 provides that such provisions do not give rise to any rights or standing for a claim
72 for a constructional defect.

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

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 1.5.** NRS 40.625 is hereby amended to read as follows:

3 40.625 ~~["Homeowner's"]~~ **"Builder's** warranty" means a
4 warranty ~~for policy of insurance:~~

5 ~~1. Issued~~ **issued** or purchased by or on behalf of a contractor
6 for the protection of a claimant. ~~For~~

7 ~~2. Purchased by or on behalf of a claimant pursuant to NRS~~
8 ~~690B.100 to 690B.180, inclusive.~~

9 → The term ~~includes~~ :

10 **1. Includes** a warranty contract issued by **or on behalf of a**
11 **contractor whose liability pursuant to the warranty contract is**
12 **subsequently insured by** a risk retention group that operates in
13 compliance with chapter 695E of NRS and insures all or any part of
14 the liability of a contractor for the cost to repair a constructional
15 defect in a residence.

16 **2. Does not include a policy of insurance for home protection**
17 **as defined in NRS 690B.100 or a service contract as defined in**
18 **NRS 690C.080.**

19 **Sec. 2.** NRS 40.645 is hereby amended to read as follows:

20 40.645 1. Except as otherwise provided in this section and
21 NRS 40.670, before a claimant commences an action or amends a
22 complaint to add a cause of action for a constructional defect against
23 a contractor, subcontractor, supplier or design professional, the
24 claimant:

25 (a) Must give written notice by certified mail, return receipt
26 requested, to the contractor, at the contractor's address listed in the
27 records of the State Contractors' Board or in the records of the
28 office of the county or city clerk or at the contractor's last known
29 address if the contractor's address is not listed in those records; and

30 (b) May give written notice by certified mail, return receipt
31 requested, to any subcontractor, supplier or design professional
32 known to the claimant who may be responsible for the
33 constructional defect, if the claimant knows that the contractor is no



1 longer licensed in this State or that the contractor no longer acts as a
2 contractor in this State.

3 2. The notice given pursuant to subsection 1 must:

4 (a) Include a statement that the notice is being given to satisfy
5 the requirements of this section;

6 (b) ~~Identify~~ *Specify* in ~~specific~~ reasonable detail ~~each~~
7 ~~defect, damage and injury~~ *the defects or any damages or injuries*
8 to each residence or appurtenance that is the subject of the claim; ~~;~~
9 ~~including, without limitation, the exact location of each such defect,~~
10 ~~damage and injury;~~

11 (c) Describe in reasonable detail the cause of the defects if the
12 cause is known and the nature and extent that is known of the
13 damage or injury resulting from the defects; and

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

22 3. A representative of a homeowners' association may send
23 notice pursuant to this section on behalf of an association if the
24 representative is acting within the scope of the representative's
25 duties pursuant to chapter 116 or 117 of NRS.

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

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

30 (b) The claimant has filed a formal complaint with a law
31 enforcement agency against the contractor, subcontractor, supplier
32 or design professional for threatening to commit or committing an
33 act of violence or a criminal offense against the claimant or the
34 property of the claimant.

35 **Sec. 3.** NRS 40.647 is hereby amended to read as follows:

36 40.647 1. After notice of a constructional defect is given
37 pursuant to NRS 40.645, before a claimant may commence an
38 action or amend a complaint to add a cause of action for a
39 constructional defect against a contractor, subcontractor, supplier or
40 design professional, the claimant must:

41 (a) Allow an inspection of the alleged constructional defect to be
42 conducted pursuant to NRS 40.6462;

43 (b) Be present *or have a representative of the claimant present*
44 at an inspection conducted pursuant to NRS 40.6462 and, *to the*
45 *extent possible, reasonably* identify the ~~exact location of each~~



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1 ~~alleged constructional defect]~~ *proximate locations of the defects, damages or injuries* specified in the notice ; ~~and, if the notice includes an expert opinion concerning the alleged constructional defect, the expert, or a representative of the expert who has knowledge of the alleged constructional defect, must also be present at the inspection and identify the exact location of each alleged constructional defect for which the expert provided an opinion;~~ and

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

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

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

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

6 **Sec. 4.** NRS 40.650 is hereby amended to read as follows:

7 40.650 1. If a claimant unreasonably rejects a reasonable written offer of settlement made as part of a response pursuant to paragraph (b) of subsection 2 of NRS 40.6472 and thereafter commences an action governed by NRS 40.600 to 40.695, inclusive, the court in which the action is commenced may:

8 (a) Deny the claimant's attorney's fees and costs; and

9 (b) Award attorney's fees and costs to the contractor.

10 ➔ Any sums paid under a ~~homeowner's~~ *builder's* warranty, other than sums paid in satisfaction of claims that are collateral to any coverage issued to or by the contractor, must be deducted from any recovery.

11 2. If a contractor, subcontractor, supplier or design professional fails to:

12 (a) Comply with the provisions of NRS 40.6472;

13 (b) Make an offer of settlement;

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

15 (d) Agree to a mediator or accept the appointment of a mediator pursuant to NRS 40.680; or

16 (e) Participate in mediation,

17 ➔ the limitations on damages and defenses to liability provided in NRS 40.600 to 40.695, inclusive, do not apply and the claimant may commence an action or amend a complaint to add a cause of action



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1 for a constructional defect without satisfying any other requirement
2 of NRS 40.600 to 40.695, inclusive.

3 3. If a residence or appurtenance that is the subject of the claim
4 is covered by a ~~homeowner's~~ **builder's** warranty ~~that is purchased~~
5 ~~by or on behalf of a claimant pursuant to NRS 690B.100 to~~
6 ~~690B.180, inclusive:~~

7 ~~(a) A claimant may not send a notice pursuant to NRS 40.645 or~~
8 ~~pursue a claim pursuant to NRS 40.600 to 40.695, inclusive, unless~~
9 ~~the claimant has first submitted a claim under the homeowner's~~
10 ~~warranty and the insurer has denied the claim.~~

11 ~~(b) A claimant may include in a notice given pursuant to NRS~~
12 ~~40.645 only claims for the constructional defects that were denied~~
13 ~~by the insurer.~~

14 ~~(c) If coverage under a homeowner's warranty is denied by an~~
15 ~~insurer in bad faith, the homeowner and the contractor,~~
16 ~~subcontractor, supplier or design professional have a right of action~~
17 ~~for the sums that would have been paid if coverage had been~~
18 ~~provided, plus reasonable attorney's fees and costs.~~

19 ~~(d) Statutes of limitation or repose applicable to a claim based~~
20 ~~on a constructional defect governed by NRS 40.600 to 40.695,~~
21 ~~inclusive, are tolled from the time notice of the claim under the~~
22 ~~homeowner's warranty is submitted to the insurer until 30 days after~~
23 ~~the insurer rejects the claim, in whole or in part, in writing.] , a~~
24 ~~claimant shall diligently pursue a claim under the builder's~~
25 ~~warranty.~~

26 4. Nothing in this section prohibits an offer of judgment
27 pursuant to Rule 68 of the Nevada Rules of Civil Procedure or
28 NRS 40.652.

29 **Sec. 5.** NRS 40.655 is hereby amended to read as follows:

30 40.655 1. Except as otherwise provided in NRS 40.650, in a
31 claim governed by NRS 40.600 to 40.695, inclusive, the claimant
32 may recover only the following damages to the extent proximately
33 caused by a constructional defect:

34 (a) The reasonable cost of any repairs already made that were
35 necessary and of any repairs yet to be made that are necessary to
36 cure any constructional defect that the contractor failed to cure and
37 the reasonable expenses of temporary housing reasonably necessary
38 during the repair;

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

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

43 (d) The reasonable value of any other property damaged by the
44 constructional defect;



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1 (e) Any additional costs reasonably incurred by the claimant ,
2 ~~for constructional defects proven by the claimant,~~ including, but
3 not limited to, any costs and fees incurred for the retention of
4 experts to:

5 (1) Ascertain the nature and extent of the constructional
6 defects;

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

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

11 (f) Any interest provided by statute.

12 2. If a contractor complies with the provisions of NRS 40.600
13 to 40.695, inclusive, the claimant may not recover from the
14 contractor, as a result of the constructional defect, any damages
15 other than damages authorized pursuant to NRS 40.600 to 40.695,
16 inclusive.

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

20 4. As used in this section, “structural failure” means physical
21 damage to the load-bearing portion of a residence or appurtenance
22 caused by a failure of the load-bearing portion of the residence or
23 appurtenance.

24 **Sec. 5.5.** NRS 40.687 is hereby amended to read as follows:

25 40.687 Notwithstanding any other provision of law:

26 1. A ~~claimant shall, within 10 days after commencing an~~
27 ~~action against a contractor, disclose to the contractor all information~~
28 ~~about any homeowner's warranty that is applicable to the claim.~~

29 ~~2. The~~ contractor shall, no later than 10 days after a response
30 is made pursuant to this chapter, disclose to the claimant any
31 information about insurance agreements that may be obtained by
32 discovery pursuant to rule 26(b)(2) of the Nevada Rules of Civil
33 Procedure. Such disclosure does not affect the admissibility at trial
34 of the information disclosed.

35 ~~3. 2.~~ Except as otherwise provided in subsection ~~4.3~~, if
36 ~~either party~~ **the contractor** fails to provide the information
37 required pursuant to subsection 1 ~~or 2~~ within the time allowed, the
38 ~~either party~~ **claimant** may petition the court to compel production
39 of the information. Upon receiving such a petition, the court may
40 order the ~~party~~ **contractor** to produce the required information and
41 may award the ~~petitioning party~~ **claimant** reasonable attorney's
42 fees and costs incurred in petitioning the court pursuant to this
43 subsection.



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1 **[4.] 3.** The parties may agree to an extension of time *for the*
2 *contractor* to produce the information required pursuant to this
3 section.

4 **[5.] 4.** For the purposes of this section, “information about
5 insurance agreements” is limited to any declaration sheets,
6 endorsements and contracts of insurance issued to the contractor
7 from the commencement of construction of the residence of the
8 claimant to the date on which the request for the information is
9 made and does not include information concerning any disputes
10 between the contractor and an insurer or information concerning any
11 reservation of rights by an insurer.

12 **Sec. 6.** (Deleted by amendment.)

13 **Sec. 7.** NRS 11.202 is hereby amended to read as follows:

14 11.202 1. No action may be commenced against the owner,
15 occupier or any person performing or furnishing the design,
16 planning, supervision or observation of construction, or the
17 construction of an improvement to real property more than **[6.] 10**
18 years after the substantial completion of such an improvement, for
19 the recovery of damages for:

20 (a) **[Any]** *Except as otherwise provided in subsection 2, any*
21 deficiency in the design, planning, supervision or observation of
22 construction or the construction of such an improvement;

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

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

27 2. *Except as otherwise provided in this subsection, an action*
28 *may be commenced against the owner, occupier or any person*
29 *performing or furnishing the design, planning, supervision or*
30 *observation of construction, or the construction of an*
31 *improvement to real property at any time after the substantial*
32 *completion of such an improvement, for the recovery of damages*
33 *for any act of fraud in causing a deficiency in the design,*
34 *planning, supervision or observation of construction or the*
35 *construction of such an improvement. The provisions of this*
36 *subsection do not apply to any lower-tiered subcontractor who*
37 *performs work that covers up a defect or deficiency in another*
38 *contractor's trade if the lower-tiered subcontractor does not know,*
39 *and should not reasonably know, of the existence of the alleged*
40 *defect or deficiency at the time of performing such work. As used*
41 *in this subsection, "lower-tiered subcontractor" has the meaning*
42 *ascribed to it in NRS 624.608.*

43 3. The provisions of this section do not apply:

44 (a) To a claim for indemnity or contribution.

45 (b) In an action brought against:



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

4 (2) Any person on account of a defect in a product.

5 **Sec. 8.** NRS 116.3102 is hereby amended to read as follows:

6 116.3102 1. Except as otherwise provided in this chapter, and
7 subject to the provisions of the declaration, the association:

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

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

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

17 (d) May institute, defend or intervene in litigation or in
18 arbitration, mediation or administrative proceedings in its own name
19 on behalf of itself or two or more units' owners on matters affecting
20 the common-interest community. The association may not institute,
21 defend or intervene in litigation or in arbitration, mediation or
22 administrative proceedings in its own name on behalf of itself or
23 units' owners with respect to an action for a constructional defect
24 pursuant to NRS 40.600 to 40.695, inclusive, unless the action
25 pertains **[exclusively]** to **[common]**:

26 (1) **Common** elements **[.]**;

27 (2) **Any portion of the common-interest community that the
28 association owns; or**

29 (3) **Any portion of the common-interest community that the
30 association does not own but has an obligation to maintain, repair,
31 insure or replace because the governing documents of the
32 association expressly make such an obligation the responsibility of
33 the association.**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

37 (s) May direct the removal of vehicles improperly parked on
38 property owned or leased by the association, as authorized pursuant
39 to NRS 487.038, or improperly parked on any road, street, alley or
40 other thoroughfare within the common-interest community in
41 violation of the governing documents. In addition to complying with
42 the requirements of NRS 487.038 and any requirements in the
43 governing documents, if a vehicle is improperly parked as described
44 in this paragraph, the association must post written notice in a
45 conspicuous place on the vehicle or provide oral or written notice to



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1 the owner or operator of the vehicle at least 48 hours before the
2 association may direct the removal of the vehicle, unless the vehicle:

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

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

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

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

13 3. The executive board may determine whether to take
14 enforcement action by exercising the association's power to impose
15 sanctions or commence an action for a violation of the declaration,
16 bylaws or rules, including whether to compromise any claim for
17 unpaid assessments or other claim made by or against it. The
18 executive board does not have a duty to take enforcement action if it
19 determines that, under the facts and circumstances presented:

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

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

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

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

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

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



1 **Sec. 8.5.** NRS 116.310312 is hereby amended to read as
2 follows:

3 116.310312 1. A person who holds a security interest in a
4 unit must provide the association with the person's contact
5 information as soon as reasonably practicable, but not later than 30
6 days after the person:

7 (a) Files an action for recovery of a debt or enforcement of any
8 right secured by the unit pursuant to NRS 40.430; or

9 (b) Records or has recorded on his or her behalf a notice of a
10 breach of obligation secured by the unit and the election to sell or
11 have the unit sold pursuant to NRS 107.080.

12 2. If an action or notice described in subsection 1 has been
13 filed or recorded regarding a unit and the association has provided
14 the unit's owner with notice and an opportunity for a hearing in the
15 manner provided in NRS 116.31031, the association, including its
16 employees, agents and community manager, may, but is not
17 required to, enter the grounds of the unit, whether or not the unit is
18 vacant, to take any of the following actions if the unit's owner
19 refuses or fails to take any action or comply with any requirement
20 imposed on the unit's owner within the time specified by the
21 association as a result of the hearing:

22 (a) Maintain the exterior of the unit in accordance with the
23 standards set forth in the governing documents, including, without
24 limitation, any provisions governing maintenance, standing water or
25 snow removal.

26 (b) Remove or abate a public nuisance on the exterior of the unit
27 which:

28 (1) Is visible from any common area of the community or
29 public streets;

30 (2) Threatens the health or safety of the residents of the
31 common-interest community;

32 (3) Results in blighting or deterioration of the unit or
33 surrounding area; and

34 (4) Adversely affects the use and enjoyment of nearby units.

35 3. If:

36 (a) A unit is vacant;

37 (b) The association has provided the unit's owner with notice
38 and an opportunity for a hearing in the manner provided in NRS
39 116.31031; and

40 (c) The association or its employee, agent or community
41 manager mails a notice of the intent of the association, including its
42 employees, agents and community manager, to maintain the exterior
43 of the unit or abate a public nuisance, as described in subsection 2,
44 by certified mail to each holder of a recorded security interest
45 encumbering the interest of the unit's owner, at the address of the



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1 holder that is provided pursuant to NRS 657.110 on the Internet
2 website maintained by the Division of Financial Institutions of the
3 Department of Business and Industry,

4 ➔ the association, including its employees, agents and community
5 manager, may enter the grounds of the unit to maintain the exterior
6 of the unit or abate a public nuisance, as described in subsection 2, if
7 the unit's owner refuses or fails to do so.

8 4. If a unit is in a building that contains units divided by
9 horizontal boundaries described in the declaration, or vertical
10 boundaries that comprise common walls between units, and the unit
11 is vacant, the association, including its employees, agents and
12 community manager, may enter the grounds and interior of the unit
13 to:

14 (a) Abate a water or sewage leak in the unit and remove any
15 water or sewage from the unit that is causing damage or, if not
16 immediately abated, may cause damage to the common elements or
17 another unit if the unit's owner refuses or fails to abate the water or
18 sewage leak.

19 (b) After providing the unit's owner with notice but before a
20 hearing in accordance with the provisions of NRS 116.31031:

21 (1) Remove any furniture, fixtures, appliances and
22 components of the unit, including, without limitation, flooring,
23 baseboards and drywall, that were damaged as a result of water or
24 mold damage resulting from a water or sewage leak to the extent
25 such removal is reasonably necessary because water or mold
26 damage threatens the health or safety of the residents of the
27 common-interest community, results in blighting or deterioration of
28 the unit or the surrounding area and adversely affects the use and
29 enjoyment of nearby units, if the unit's owner refuses or fails to
30 remediate or remove the water or mold damage.

31 (2) Remediate or remove any water or mold damage in the
32 unit resulting from the water or sewage leak to the extent such
33 remediation or removal is reasonably necessary because the water or
34 mold damage threatens the health or safety of the residents of the
35 common-interest community, results in blighting or deterioration of
36 the unit or the surrounding area and adversely affects the use and
37 enjoyment of nearby units, if the unit's owner refuses or fails to
38 remediate or remove the water or mold damage.

39 5. After the association has provided the unit's owner with
40 notice and an opportunity for a hearing in the manner provided in
41 NRS 116.31031, the association may order that the costs of any
42 maintenance or abatement or the reasonable costs of remediation or
43 removal conducted pursuant to subsection 2, 3 or 4, including,
44 without limitation, reasonable inspection fees, notification and
45 collection costs and interest, be charged against the unit. The



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1 association shall keep a record of such costs and interest charged
2 against the unit and has a lien on the unit for any unpaid amount of
3 the charges. The lien may be foreclosed under NRS 116.31162 to
4 116.31168, inclusive.

5 6. A lien described in subsection 5 bears interest from the date
6 that the charges become due at a rate determined pursuant to NRS
7 17.130 until the charges, including all interest due, are paid.

8 7. Except as otherwise provided in this subsection, a lien
9 described in subsection 5 is prior and superior to all liens, claims,
10 encumbrances and titles other than the liens described in paragraphs
11 (a) and (c) of subsection 2 of NRS 116.3116. If the federal
12 regulations of the Federal Home Loan Mortgage Corporation or the
13 Federal National Mortgage Association require a shorter period of
14 priority for the lien, the period during which the lien is prior and
15 superior to other security interests shall be determined in accordance
16 with those federal regulations. Notwithstanding the federal
17 regulations, the period of priority of the lien must not be less than
18 the 6 months immediately preceding the institution of an action to
19 enforce the lien.

20 8. A person who purchases or acquires a unit at a foreclosure
21 sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS
22 107.080 is bound by the governing documents of the association and
23 shall maintain the exterior of the unit in accordance with the
24 governing documents of the association. Such a unit may only be
25 removed from a common-interest community in accordance with the
26 governing documents pursuant to this chapter.

27 9. Notwithstanding any other provision of law, an association,
28 its directors or members of the executive board, employees, agents
29 or community manager who enter the grounds or interior of a unit
30 pursuant to this section are not liable for trespass.

31 10. *Nothing in this section gives rise to any rights or standing
32 for a claim for a constructional defect made pursuant to NRS
33 40.600 to 40.695, inclusive.*

34 11. As used in this section:

35 (a) "Exterior of the unit" includes, without limitation, all
36 landscaping outside of a unit, the exterior of all property exclusively
37 owned by the unit owner and the exterior of all property that the unit
38 owner is obligated to maintain pursuant to the declaration.

39 (b) "Remediation" does not include restoration.

40 (c) "Vacant" means a unit:

41 (1) Which reasonably appears to be unoccupied;

42 (2) On which the owner has failed to maintain the exterior to
43 the standards set forth in the governing documents of the
44 association; and



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3 **Sec. 9.** (Deleted by amendment.)

4 **Sec. 10.** (Deleted by amendment.)

5 **Sec. 11.** 1. The provisions of NRS 40.645 and 40.650, as
6 amended by sections 2 and 4 of this act, respectively, apply to a
7 notice of constructional defect given on or after October 1, 2019.

8 2. The provisions of NRS 40.647, as amended by section 3 of
9 this act, apply to an inspection conducted pursuant to NRS 40.6462
10 on or after October 1, 2019.

11 3. The provisions of NRS 40.655, as amended by section 5 of
12 this act, apply to any claim for which a notice of constructional
13 defect is given on or after October 1, 2019.

14 4. The period of limitations on actions set forth in NRS 11.202,
15 as amended by section 7 of this act, apply retroactively to actions in
16 which the substantial completion of the improvement to the real
17 property occurred before October 1, 2019.

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