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**GENERAL PROVISIONS**

**NRS 40.005 Zoning requirements to be considered by court.** In any proceeding involving disposition of land the court shall consider lot size and other applicable zoning requirements before ordering a physical division of the land.

(Added to NRS by 1977, 1512)

**ACTIONS TO DETERMINE CONFLICTING CLAIMS TO REAL PROPERTY**

**NRS 40.010 Actions may be brought against adverse claimants.** An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim.

[1911 CPA § 572; RL § 5514; NCL § 9061]

**NRS 40.020 Plaintiff not entitled to costs on default judgment or disclaimer.** If the defendant in such action disclaim in the defendant’s answer any interest or estate in the property, or suffer judgment to be taken against the defendant without answer, the plaintiff shall not recover costs.

[1911 CPA § 573; RL § 5515; NCL § 9062]

**NRS 40.030 Plaintiff may recover damages for property withheld where plaintiff’s right terminated during pendency of action.** In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced but it appears that the plaintiff’s right has terminated during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

[1911 CPA § 574; RL § 5516; NCL § 9063]

**NRS 40.040 Value of permanent improvements to be allowed as setoff.** When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by a defendant or those under whom the defendant claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a setoff against such damages.

[1911 CPA § 575; RL § 5517; NCL § 9064]

**NRS 40.050 Mortgage not deemed conveyance.** A mortgage of real property shall not be deemed a conveyance, whatever its terms, so as to enable the owner of the mortgage to take possession of the real property without a foreclosure and sale.

[1911 CPA § 576; RL § 5518; NCL § 9065]

**NRS 40.060 Court may enjoin injury to property during foreclosure.** The court may by injunction, on good cause shown, restrain the party in possession from doing any act to the injury of real property during the foreclosure of a

mortgage thereon; or after a sale on execution, before a conveyance.

[1911 CPA § 577; RL § 5519; NCL § 9066]

**NRS 40.070 Damages may be recovered for injury to possession after sale and before delivery.** When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to the purchaser's interest, may, after the purchaser's estate becomes absolute, recover damages for injury to the property by the tenant in possession, after sale and before possession is delivered under the conveyance.

[1911 CPA § 578; RL § 5520; NCL § 9067]

**NRS 40.080 Action not to be prejudiced by alienation pending suit.** An action for the recovery of real property against a person in possession cannot be prejudiced by an alienation made by such person, either before or after the commencement of the action.

[1911 CPA § 579; RL § 5521; NCL § 9068]

**NRS 40.090 Action by person in adverse possession: Verified complaint; defendants; notice of pending litigation.**

1. An action may be brought to determine the adverse claims to and clouds upon title to real property by a person who, personally or in combination with the person's predecessors in interest, has been in the actual, exclusive and adverse possession of such property continuously for more than 15 years prior to the filing of the complaint, claiming to own the same in fee, or by any other freehold estate, against the whole world, and who has, personally or through the person's predecessors in interest, paid all taxes of every kind levied or assessed and due against the property during the period of 5 years next preceding the filing of the complaint, except that where clouds upon title to real property have been created by such person, and the action is brought to remove such clouds, or any of them, such period of actual, exclusive and adverse possession of such property shall be for more than 10 years. The action shall be commenced by the filing of a verified complaint averring the matters above enumerated.

2. The complaint must include as defendants in such action, in addition to such persons as appear of record to have some claim, all other persons who are known, or by the exercise of reasonable diligence could be known, to plaintiff to have some claim to an estate, interest, right, title, lien or cloud in or on the land described in the complaint adverse to plaintiff's ownership; and the complaint may also include as defendants any and all other persons, unknown, claiming any estate, right, title, interest or lien in such lands, or cloud upon the title of plaintiff thereto; and the plaintiff may describe such unknown defendants in the complaint as follows: "Also all other persons unknown claiming any right, title, estate, lien or interest in the real property described in the complaint adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto."

3. Within 10 days after the filing of the complaint, plaintiff shall file or cause to be filed in the office of the county recorder of the county where the property is situated, a notice of the pendency of the action containing the matters required by [NRS 14.010](#).

[1911 CPA § 580; RL § 5522; NCL § 9069]—(NRS A 1965, 613)

**NRS 40.100 Action by person in adverse possession: Issuance, service and posting of summons; rights of unknown persons.**

1. Within 1 year after the filing of the complaint, as required by [NRS 40.090](#), a summons must be issued in the manner and form prescribed in the Nevada Rules of Civil Procedure. In addition to other requirements, the summons shall contain a description of the property described in the complaint. In the summons the unknown defendants shall be designated as in the complaint. Service of summons, whether personal or otherwise, shall be effected in the manner prescribed in the Nevada Rules of Civil Procedure; and the times for completion of service and appearance by the defendant shall be as prescribed therein.

2. Within 30 days after the issuance of the summons, the plaintiff shall post or cause to be posted a copy thereof in a conspicuous place, on each separate parcel of the property described in the complaint, and each parcel of the land upon which a copy of the summons is posted shall be deemed to be in the possession of the court for all the purposes of and pending the determination of the action. All such unknown persons so served shall have the same rights as are provided by law in cases of all other defendants named, upon whom service is made by publication or personally, and the action shall proceed against such unknown persons in the same manner as against the defendants who are named, upon whom service is made by publication or personally, and with like effect; and any such unknown person who has or claims to have any right, title, estate, lien or interest in the property, or cloud on the title thereto, adverse to plaintiff, at the time of the commencement of the action, who has been duly served as aforesaid, and anyone claiming title under the unknown person shall be concluded by the judgment in such action as effectually as if the action had been brought against the person by his or her name and personal service of process obtained, notwithstanding any such unknown person may be under legal disability.

[1911 CPA § 581; A 1937, 23; 1955, 466]

**NRS 40.110 Court to hear case; must not enter judgment by default; effect of final judgment.**

1. When the summons has been served as provided in [NRS 40.100](#) and the time for answering has expired, the court shall proceed to hear the case as in other cases and shall have jurisdiction to examine into and determine the legality of plaintiff's title and of the title and claim of all the defendants and of all unknown persons, and to that end must not enter any judgment by default, but must in all cases require evidence of plaintiff's title and possession and receive such legal evidence as may be offered respecting the claims and title of any of the defendants and must thereafter direct judgment to

be entered in accordance with the evidence and the law. The court, before proceeding to hear the case, must require proof to be made that the summons has been served and posted as hereinbefore directed and that the required notice of pendency of action has been filed.

2. The judgment after it has become final shall be conclusive against all the persons named in the summons and complaint who have been served personally, or by publication, and against all unknown persons as stated in the complaint and summons who have been served by publication, but shall not be conclusive against the State of Nevada or the United States. The judgment shall have the effect of a judgment in rem except as against the State of Nevada and the United States; and the judgment shall not bind or be conclusive against any person claiming any recorded estate, title, right, possession or lien in or to the property under the plaintiff or the plaintiff's predecessors in interest, which claim, lien, estate, title, right or possession has arisen or been created by the plaintiff or the plaintiff's predecessor in interest within 10 years prior to the filing of the complaint.

[1911 CPA § 582; RL § 5524; NCL § 9071]

**NRS 40.120 Remedy is cumulative.** The remedy provided in [NRS 40.090](#), [40.100](#) and [40.110](#) shall be construed as cumulative and not exclusive of any other remedy, form or right of action or proceeding now allowed by law.

[1911 CPA § 583; RL § 5525; NCL § 9072]

**NRS 40.130 Adverse action on mining claim.** In all actions brought to determine the right of possession of a mining claim, or metalliferous vein or lode, where an application has been made to the proper officers of the Government of the United States by either of the parties to such action for a patent for the mining claim, vein or lode, it shall only be necessary to confer jurisdiction on the court to try the action, and render a proper judgment therein, that it appear that an application for a patent for such mining claim, vein or lode has been made, and that the parties to the action are claiming such mining claim, vein or lode, or some part thereof, or the right of possession thereof.

[1911 CPA § 584; RL § 5526; NCL § 9073]

### **ACTIONS FOR NUISANCE, WASTE AND WILLFUL TRESPASS ON REAL PROPERTY**

**NRS 40.140 Nuisance defined; action for abatement and damages; exceptions.**

1. Except as otherwise provided in this section:

(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;

(b) A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog;

(c) A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(1) Which has not been deemed safe for habitation by the board of health; or

(2) From which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog; or

(d) A building or place regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang,

is a nuisance, and the subject of an action. The action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

2. It is presumed:

(a) That an agricultural activity conducted on farmland, consistent with good agricultural practice and established before surrounding nonagricultural activities is reasonable. Such activity does not constitute a nuisance unless the activity has a substantial adverse effect on the public health or safety.

(b) That an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

3. A shooting range does not constitute a nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

(a) As those provisions existed on October 1, 1997, for a shooting range in operation on or before October 1, 1997; or

(b) As those provisions exist on the date that the shooting range begins operation, for a shooting range that begins operation after October 1, 1997.

A shooting range is not subject to any state or local law related to the control of noise that is adopted or amended after the date set forth in paragraph (a) or (b), as applicable, and does not constitute a nuisance for failure to comply with any such law.

4. As used in this section:

(a) "Board of health" has the meaning ascribed to it in [NRS 439.4797](#).

(b) "Controlled substance analog" has the meaning ascribed to it in [NRS 453.043](#).

(c) "Criminal gang" has the meaning ascribed to it in [NRS 193.168](#).

(d) "Immediate precursor" has the meaning ascribed to it in [NRS 453.086](#).

(e) "Shooting range" means an area designed and used for archery or sport shooting, including, but not limited to, sport shooting that involves the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or other similar items.

[1911 CPA § 562; RL § 5504; NCL § 9051]—(NRS A 1985, 873; 1997, 951, 1471, 1472; [2007, 3128](#); [2009, 825, 1309](#))

**NRS 40.150 Action for waste; judgment may be for treble damages.** If a guardian, tenant for life or years, joint tenant or tenant in common of real property commit waste thereon, any person aggrieved by the waste may bring an action against the guardian or tenant who committed the waste, in which action there may be judgment for treble damages.

[1911 CPA § 563; RL § 5505; NCL § 9052]

**NRS 40.160 Action for trespass for cutting or carrying away trees or wood; treble damages.**

1. Any person who cuts down or carries off any wood or underwood, tree or timber, or girdles or otherwise injures any tree or timber on the land of another person, or on the street or highway in front of any person's house, city or town lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway in front thereof, without lawful authority, is liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in a civil action in any court having jurisdiction.

2. Nothing in subsection 1 of this section authorizes the recovery of more than the just value of the timber taken from uncultivated woodland for the repair of a public highway or bridge upon the land, or adjoining it.

[1911 CPA § 564; RL § 5506; NCL § 9053] + [1911 CPA § 565; RL § 5507; NCL § 9054]—(NRS A 1983, 111)

**NRS 40.170 Damages in actions for forcible or unlawful entry may be trebled.**

1. If a person recovers damages for a forcible or unlawful entry in or upon, or detention of, any building or any uncultivated or cultivated real property, judgment may be entered for three times the amount at which the actual damages are assessed.

2. As used in this section, "actual damages" means damages to real property and personal property.

[1911 CPA § 566; RL § 5508; NCL § 9055]—(NRS A 1959, 22; [2009, 12](#))

**NRS 40.180 Manner of working mine or mining claim; assessment of damages.**

1. Any person being the owner of, or in possession under any lease or contract for the working of any mine or mines within this state, shall have the right to institute and maintain an action for the recovery of any damages that may accrue by reason of the manner in which any mine or mines have been or are being worked and managed by any person who may be the owner, or in possession of and working such mine or mines under a lease or contract, and to prevent the continuance of working and managing such mine or mines in such manner as to hinder, injure, or in anywise endanger the safety of any mine or mines adjacent or adjoining thereto.

2. Any such owner of, or person in the possession of, any mine or mining claim, who shall enter upon or into, in any manner, any mine or mining claim, the property of another, and mine, extract, excavate or carry away any valuable mineral therefrom shall be liable to the owner of any such mine or mines trespassed upon in the amount of the value of all such mineral mined, extracted, excavated or carried away, and for all other damages, and in the absence of a showing to the contrary, the value of all such mineral mined, extracted, excavated or carried away shall be presumed to be twice the amount of the gross value of the same ascertained by an average assay of the excavated material or the ledge from which it was taken. If such trespass was made in bad faith, such damages may be trebled.

[1911 CPA § 567; RL § 5509; NCL § 9056]

**NRS 40.190 Continuation of judgment lien.** Any judgment obtained for damages under the provisions of [NRS 40.180](#) shall become a lien upon all the property of the judgment debtor not exempt from execution in the State of Nevada, owned by the judgment debtor, or which may afterwards be acquired, as is now provided for by law, which lien shall continue 2 years, unless the judgment be sooner satisfied.

[1911 CPA § 568; RL § 5510; NCL § 9057]

**NRS 40.200 Application for order of survey; notice and order; report of survey; costs of and damages caused by survey.**

1. Any person named in [NRS 40.180](#) and [40.190](#) shall have the right to apply for and obtain from any district court, or the judge thereof, an order of survey in the following manner: An application shall be made by filing the affidavit of the person making the application, which affidavit shall state, as near as can be described, the location of the mine or mines of the parties complained of, and as far as known, the names of such parties; also, the location of the mine or mines of the party making such application, and that the party has reason to believe, and does believe, that the parties complained of, their agent, or employees, are or have been trespassing upon the mine or mines of the party complaining, or are working their mine in such manner as to damage or endanger the property of the affiant.

2. Upon the filing of the affidavit as prescribed in subsection 1, the court or judge shall cause a notice to be given to the party complained of, or the agent thereof, which notice shall state the time, place, and before whom the application will be heard, and shall cite the party to appear in not less than 5 nor more than 10 days from the date thereof, to show cause why an order of survey should not be granted; and upon good cause shown, the court or judge shall grant such order, directed to some competent surveyor or surveyors, or to some competent mechanics, or miners, or both, as the case may be, who shall proceed to make the necessary examination as directed by the court and report the result and conclusions to the court, which report shall be filed with the clerk of the court.

3. The costs of the order and survey shall be paid by the persons making the application, unless such parties shall subsequently maintain an action and recover damages, as provided for in [NRS 40.180](#), by reason of a trespass or damage done or threatened prior to such survey or examination having been made, and in that case, such costs shall be taxed

against the defendant as other costs in the suit.

4. The parties obtaining such survey shall be liable for any unnecessary injury done to the property in the making of such survey.

[1911 CPA § 569; RL § 5511; NCL § 9058]

**NRS 40.210 Order allowing party to survey and measure land in dispute; contents and service of order; liability for unnecessary injury.**

1. The court in which an action is pending for the recovery of real property or for damages for an injury thereto, or a judge thereof, may, on motion, upon notice by either party for good cause shown, grant an order allowing to such party the right to enter upon the property and make survey and measurement thereof, for the purpose of the action, even though entry for such purpose has to be made through other lands belonging to parties to the action.

2. The order shall describe the property; a copy thereof shall be served on the owner or occupant, and thereupon such party may enter upon the property with necessary surveyors and assistants, and may make such survey and measurements; but if any unnecessary injury be done to the property the party shall be liable therefor.

[1911 CPA § 570; RL § 5512; NCL § 9059] + [1911 CPA § 571; RL § 5513; NCL § 9060]

**SUMMARY PROCEEDINGS FOR OBTAINING POSSESSION OF REAL PROPERTY, RECREATIONAL VEHICLE OR MOBILE HOME**

**NRS 40.215 Definitions.** As used in [NRS 40.215](#) to [40.425](#), inclusive, unless the context requires otherwise:

1. "Mobile home" means every vehicle, including equipment, which is constructed, reconstructed or added to in such a way as to have an enclosed room or addition occupied by one or more persons as a dwelling or sleeping place and which has no foundation other than wheels, jacks, skirting or other temporary support.

2. "Mobile home lot" means a portion of land within a mobile home park which is rented or held out for rent to accommodate a mobile home.

3. "Mobile home park" or "park" means an area or tract of land where two or more mobile homes or mobile home lots are rented or held out for rent. "Mobile home park" or "park" does not include those areas or tracts of land, whether within or outside of a park, where the lots are held out for rent on a nightly basis.

4. "Premises" includes a mobile home.

5. "Recreational vehicle" means a vehicular structure primarily designed as temporary living quarters for travel, recreational or camping use, which may be self-propelled or mounted upon or drawn by a motor vehicle.

6. "Recreational vehicle lot" means a portion of land within a recreational vehicle park, or a portion of land so designated within a mobile home park, which is rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

7. "Recreational vehicle park" means an area or tract of land where lots are rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

(Added to NRS by 1969, 264; A 1979, 1877; 1981, 2037; 1989, 1081; 1997, 3510)

**NRS 40.220 Entry to be made only when legal and in peaceable manner.** No entry shall be made into any lands, tenements or other possessions but in cases where entry is given by law; and in such cases, only in a peaceable manner, not with strong hand nor with multitude of people.

[1911 CPA § 643; RL § 5585; NCL § 9132]

**NRS 40.230 Forcible entry defined.** Every person is guilty of a forcible entry who either:

1. By breaking open doors, windows or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, enters upon or into any real property; or

2. Who, after entering peaceably upon real property, turns out by force, threats or menacing conduct, the party in natural possession.

[1911 CPA § 644; RL § 5586; NCL § 9133]

**NRS 40.240 Forcible detainer defined.** Every person is guilty of a forcible detainer who either:

1. By force, or by menaces or threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or

2. Who, in the nighttime, or during the absence of the occupant of any real property, unlawfully enters thereon, and who, after demand made for the surrender thereof, refuses for a period of 3 days to surrender the same to such former occupant. The occupant of real property within the meaning of this subsection is one who, within 5 days preceding such unlawful entry, was in the peaceable and undisturbed possession of such lands.

[1911 CPA § 645; RL § 5587; NCL § 9134]

**NRS 40.250 Unlawful detainer: Possession after expiration of term.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, of the property or mobile home or any part thereof, after the expiration of the term for which it is let to the tenant. In all cases where real property is leased for a specified term or period, or by express or implied contract, whether written or parol, the tenancy terminates without notice at the expiration of the specified term or period.

[1911 CPA § 646; A 1917, 31; 1919 RL § 5588; NCL § 9135]—(NRS A 1969, 262, 574; 1973, 1084; 1977, 1344; 1979, 1877; 1985, 227)

**NRS 40.251 Unlawful detainer: Possession of property leased for indefinite time after notice to quit; older or disabled person entitled to extension of period of possession upon request.**

1. A tenant of real property, a recreational vehicle or a mobile home for a term less than life is guilty of an unlawful detainer when having leased:

(a) Real property, except as otherwise provided in this section, or a mobile home for an indefinite time, with monthly or other periodic rent reserved, the tenant continues in possession thereof, in person or by subtenant, without the landlord's consent after the expiration of a notice of:

- (1) For tenancies from week to week, at least 7 days;
- (2) Except as otherwise provided in subsection 2, for all other periodic tenancies, at least 30 days; or
- (3) For tenancies at will, at least 5 days.

(b) A dwelling unit subject to the provisions of [chapter 118A](#) of NRS, the tenant continues in possession, in person or by subtenant, without the landlord's consent after expiration of:

(1) The term of the rental agreement or its termination and, except as otherwise provided in subparagraph (2), the expiration of a notice of:

- (I) At least 7 days for tenancies from week to week; and
- (II) Except as otherwise provided in subsection 2, at least 30 days for all other periodic tenancies; or

(2) A notice of at least 5 days where the tenant has failed to perform the tenant's basic or contractual obligations under [chapter 118A](#) of NRS.

(c) A mobile home lot subject to the provisions of [chapter 118B](#) of NRS, or a lot for a recreational vehicle in an area of a mobile home park other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of [NRS 40.215](#), the tenant continues in possession, in person or by subtenant, without the landlord's consent:

(1) After notice has been given pursuant to [NRS 118B.115](#), [118B.170](#) or [118B.190](#) and the period of the notice has expired; or

(2) If the person is not a natural person and has received three notices for nonpayment of rent within a 12-month period, immediately upon failure to pay timely rent.

(d) A recreational vehicle lot, the tenant continues in possession, in person or by subtenant, without the landlord's consent, after the expiration of a notice of at least 5 days.

2. Except as otherwise provided in this section, if a tenant with a periodic tenancy pursuant to paragraph (a) or (b) of subsection 1, other than a tenancy from week to week, is 60 years of age or older or has a physical or mental disability, the tenant may request to be allowed to continue in possession for an additional 30 days beyond the time specified in subsection 1 by submitting a written request for an extended period and providing proof of the tenant's age or disability. A landlord may not be required to allow a tenant to continue in possession if a shorter notice is provided pursuant to subparagraph (2) of paragraph (b) of subsection 1.

3. Any notice provided pursuant to paragraph (a) or (b) of subsection 1 must include a statement advising the tenant of the provisions of subsection 2.

4. If a landlord rejects a request to allow a tenant to continue in possession for an additional 30 days pursuant to subsection 2, the tenant may petition the court for an order to continue in possession for the additional 30 days. If the tenant submits proof to the court that the tenant is entitled to request such an extension, the court may grant the petition and enter an order allowing the tenant to continue in possession for the additional 30 days. If the court denies the petition, the tenant must be allowed to continue in possession for 5 calendar days following the date of entry of the order denying the petition.

(Added to NRS by 1985, 226; A 1989, 1081; [1999, 3195](#); [2001, 1946](#); [2003, 2480](#))

**NRS 40.2512 Unlawful detainer: Possession after default in payment of rent.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, after default in the payment of any rent and after a notice in writing, requiring in the alternative the payment of the rent or the surrender of the detained premises, remains uncomplied with for a period of 5 days, or in the case of a mobile home lot, 10 days after service thereof. The notice may be served at any time after the rent becomes due.

(Added to NRS by 1985, 226)

**NRS 40.2514 Unlawful detainer: Assignment or subletting contrary to lease; waste; unlawful business; nuisance; violations of controlled substances laws.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant:

1. Assigns or sublets the leased premises contrary to the covenants of the lease;
2. Commits or permits waste thereon;
3. Sets up or carries on therein or thereon any unlawful business;

4. Suffers, permits or maintains on or about the premises any nuisance that consists of conduct or an ongoing condition which constitutes an unreasonable obstruction to the free use of property and causes injury and damage to other tenants or occupants of that property or adjacent buildings or structures; or

5. Violates any of the provisions of [NRS 453.011](#) to [453.552](#), inclusive, except [NRS 453.336](#), therein or thereon, and remains in possession after service upon the tenant of 3 days' notice to quit.

(Added to NRS by 1985, 226; A 1989, 1232; [2001, 1065](#); [2003, 561](#); [2007, 1287](#))

**NRS 40.2516 Unlawful detainer: Possession after failure to perform conditions of lease; saving lease from forfeiture.** A tenant of real property or a mobile home for a term less than life is guilty of an unlawful detainer when the tenant continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of

the lease or agreement under which the property or mobile home is held, other than those mentioned in [NRS 40.250](#) to [40.252](#), inclusive, and [NRS 40.254](#), and after notice in writing, requiring in the alternative the performance of the condition or covenant or the surrender of the property, served upon the tenant, and, if there is a subtenant in actual occupation of the premises, also upon the subtenant, remains uncomplished with for 5 days after the service thereof. Within 3 days after the service, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person, interested in its continuance, may perform the condition or covenant and thereby save the lease from forfeiture; but if the covenants and conditions of the lease, violated by the lessee, cannot afterwards be performed, then no notice need be given.

(Added to NRS by 1985, 226)

**NRS 40.252 Unlawful detainer: Contractual provisions void if contrary to specified periods of notice; notice to quit or surrender by colessor is valid unless showing other colessors did not authorize notice.** For the purposes of [NRS 40.250](#) to [40.252](#), inclusive, and [NRS 40.254](#):

1. It is unlawful for a landlord to attempt by contract or other agreement to shorten the specified periods of notice and any such contract or agreement is void.

2. Notice to quit or surrender the premises which was given by one colessor of real property or a mobile home is valid unless it is affirmatively shown that one or more of the other colessors did not authorize the giving of the notice.

(Added to NRS by 1985, 227)

**NRS 40.253 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant for default in payment of rent.**

1. Except as otherwise provided in subsection 10, in addition to the remedy provided in [NRS 40.2512](#) and [40.290](#) to [40.420](#), inclusive, when the tenant of any dwelling, apartment, mobile home, recreational vehicle or commercial premises with periodic rent reserved by the month or any shorter period is in default in payment of the rent, the landlord or the landlord's agent, unless otherwise agreed in writing, may serve or have served a notice in writing, requiring in the alternative the payment of the rent or the surrender of the premises:

(a) At or before noon of the fifth full day following the day of service; or

(b) If the landlord chooses not to proceed in the manner set forth in paragraph (a) and the rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, at or before noon of the fourth full day following the day of service.

È As used in this subsection, "day of service" means the day the landlord or the landlord's agent personally delivers the notice to the tenant. If personal service was not so delivered, the "day of service" means the day the notice is delivered, after posting and mailing pursuant to subsection 2, to the sheriff or constable for service if the request for service is made before noon. If the request for service by the sheriff or constable is made after noon, the "day of service" shall be deemed to be the day next following the day that the request is made for service by the sheriff or constable.

2. A landlord or the landlord's agent who serves a notice to a tenant pursuant to paragraph (b) of subsection 1 shall attempt to deliver the notice in person in the manner set forth in paragraph (a) of subsection 1 of [NRS 40.280](#). If the notice cannot be delivered in person, the landlord or the landlord's agent:

(a) Shall post a copy of the notice in a conspicuous place on the premises and mail the notice by overnight mail; and

(b) After the notice has been posted and mailed, may deliver the notice to the sheriff or constable for service in the manner set forth in subsection 1 of [NRS 40.280](#). The sheriff or constable shall not accept the notice for service unless it is accompanied by written evidence, signed by the tenant when the tenant took possession of the premises, that the landlord or the landlord's agent informed the tenant of the provisions of this section which set forth the lawful procedures for eviction from a short-term tenancy. Upon acceptance, the sheriff or constable shall serve the notice within 48 hours after the request for service was made by the landlord or the landlord's agent.

3. A notice served pursuant to subsection 1 or 2 must:

(a) Identify the court that has jurisdiction over the matter; and

(b) Advise the tenant of the tenant's right to contest the matter by filing, within the time specified in subsection 1 for the payment of the rent or surrender of the premises, an affidavit with the court that has jurisdiction over the matter stating that the tenant has tendered payment or is not in default in the payment of the rent.

4. If the tenant files such an affidavit at or before the time stated in the notice, the landlord or the landlord's agent, after receipt of a file-stamped copy of the affidavit which was filed, shall not provide for the nonadmittance of the tenant to the premises by locking or otherwise.

5. Upon noncompliance with the notice:

(a) The landlord or the landlord's agent may apply by affidavit of complaint for eviction to the justice court of the township in which the dwelling, apartment, mobile home or commercial premises are located or to the district court of the county in which the dwelling, apartment, mobile home or commercial premises are located, whichever has jurisdiction over the matter. The court may thereupon issue an order directing the sheriff or constable of the county to remove the tenant within 24 hours after receipt of the order. The affidavit must state or contain:

(1) The date the tenancy commenced.

(2) The amount of periodic rent reserved.

(3) The amounts of any cleaning, security or rent deposits paid in advance, in excess of the first month's rent, by the tenant.

(4) The date the rental payments became delinquent.

(5) The length of time the tenant has remained in possession without paying rent.

(6) The amount of rent claimed due and delinquent.

(7) A statement that the written notice was served on the tenant in accordance with [NRS 40.280](#).

(8) A copy of the written notice served on the tenant.

(9) A copy of the signed written rental agreement, if any.

(b) Except when the tenant has timely filed the affidavit described in subsection 3 and a file-stamped copy of it has been received by the landlord or the landlord's agent, and except when the landlord is prohibited pursuant to [NRS 118A.480](#), the landlord or the landlord's agent may, in a peaceable manner, provide for the nonadmittance of the tenant to the premises by locking or otherwise.

6. Upon the filing by the tenant of the affidavit permitted in subsection 3, regardless of the information contained in the affidavit, and the filing by the landlord of the affidavit permitted by subsection 5, the justice court or the district court shall hold a hearing, after service of notice of the hearing upon the parties, to determine the truthfulness and sufficiency of any affidavit or notice provided for in this section. If the court determines that there is no legal defense as to the alleged unlawful detainer and the tenant is guilty of an unlawful detainer, the court may issue a summary order for removal of the tenant or an order providing for the nonadmittance of the tenant. If the court determines that there is a legal defense as to the alleged unlawful detainer, the court shall refuse to grant either party any relief, and, except as otherwise provided in this subsection, shall require that any further proceedings be conducted pursuant to [NRS 40.290 to 40.420](#), inclusive. The issuance of a summary order for removal of the tenant does not preclude an action by the tenant for any damages or other relief to which the tenant may be entitled. If the alleged unlawful detainer was based upon subsection 5 of [NRS 40.2514](#), the refusal by the court to grant relief does not preclude the landlord thereafter from pursuing an action for unlawful detainer in accordance with [NRS 40.251](#).

7. The tenant may, upon payment of the appropriate fees relating to the filing and service of a motion, file a motion with the court, on a form provided by the clerk of the court, to dispute the amount of the costs, if any, claimed by the landlord pursuant to [NRS 118.207](#) or [118A.460](#) for the inventory, moving and storage of personal property left on the premises. The motion must be filed within 20 days after the summary order for removal of the tenant or the abandonment of the premises by the tenant, or within 20 days after:

(a) The tenant has vacated or been removed from the premises; and

(b) A copy of those charges has been requested by or provided to the tenant,

È whichever is later.

8. Upon the filing of a motion pursuant to subsection 7, the court shall schedule a hearing on the motion. The hearing must be held within 10 days after the filing of the motion. The court shall affix the date of the hearing to the motion and order a copy served upon the landlord by the sheriff, constable or other process server. At the hearing, the court may:

(a) Determine the costs, if any, claimed by the landlord pursuant to [NRS 118.207](#) or [118A.460](#) and any accumulating daily costs; and

(b) Order the release of the tenant's property upon the payment of the charges determined to be due or if no charges are determined to be due.

9. A landlord shall not refuse to accept rent from a tenant that is submitted after the landlord or the landlord's agent has served or had served a notice pursuant to subsection 1 if the refusal is based on the fact that the tenant has not paid collection fees, attorney's fees or other costs other than rent, a reasonable charge for late payments of rent or dishonored checks, or a security. As used in this subsection, "security" has the meaning ascribed to it in [NRS 118A.240](#).

10. This section does not apply to the tenant of a mobile home lot in a mobile home park or to the tenant of a recreational vehicle lot in an area of a mobile home park in this State other than an area designated as a recreational vehicle lot pursuant to the provisions of subsection 6 of [NRS 40.215](#).

(Added to NRS by 1967, 195; A 1969, 263, 575; 1973, 1085; 1975, 1202; 1977, 418, 1346; 1979, 1398, 1879; 1985, 229; 1987, 1239; 1989, 1082, 1232; 1991, 113; 1995, 1851; 1997, 3511; [1999, 981](#); [2009, 1966](#))

**NRS 40.254 Unlawful detainer: Supplemental remedy of summary eviction and exclusion of tenant from certain types of property.** Except as otherwise provided by specific statute, in addition to the remedy provided in [NRS 40.251](#) and in [NRS 40.290](#) to [40.420](#), inclusive, when the tenant of a dwelling unit which is subject to the provisions of [chapter 118A](#) of NRS, part of a low-rent housing program operated by a public housing authority, a mobile home or a recreational vehicle is guilty of an unlawful detainer, the landlord is entitled to the summary procedures provided in [NRS 40.253](#) except that:

1. Written notice to surrender the premises must:

(a) Be given to the tenant in accordance with the provisions of [NRS 40.280](#);

(b) Advise the tenant of the court that has jurisdiction over the matter; and

(c) Advise the tenant of the tenant's right to contest the notice by filing within 5 days an affidavit with the court that has jurisdiction over the matter that the tenant is not guilty of an unlawful detainer.

2. The affidavit of the landlord or the landlord's agent submitted to the justice court or the district court must contain:

(a) The date when the tenancy commenced, the term of the tenancy, and, if any, a copy of the rental agreement.

(b) The date when the tenancy or rental agreement allegedly terminated.

(c) The date when the tenant became subject to the provisions of [NRS 40.251](#) to [40.2516](#), inclusive, together with any supporting facts.

(d) The date when the written notice was given, a copy of the notice and a statement that notice was served in accordance with [NRS 40.280](#).

(e) A statement that the claim for relief was authorized by law.

3. If the tenant is found guilty of unlawful detainer as a result of the tenant's violation of any of the provisions of [NRS 453.011](#) to [453.552](#), inclusive, except [NRS 453.336](#), the landlord is entitled to be awarded any reasonable attorney's fees incurred by the landlord or the landlord's agent as a result of a hearing, if any, held pursuant to subsection 6 of [NRS](#)

[40.253](#) wherein the tenant contested the eviction.

(Added to NRS by 1985, 227; A 1989, 1084, 1234; 1991, 115; 1995, 1853; [2001, 1065](#); [2003, 561](#))

**NRS 40.255 Removal of person holding over after 3-day notice to quit; circumstances authorizing removal; exception and additional notice required for occupying tenants and subtenants of property sold as residential foreclosure.**

1. Except as otherwise provided in subsections 2 and 7, in any of the following cases, a person who holds over and continues in possession of real property or a mobile home after a 3-day written notice to quit has been served upon the person may be removed as prescribed in [NRS 40.290](#) to [40.420](#), inclusive:

(a) Where the property or mobile home has been sold under an execution against the person, or against another person under whom the person claims, and the title under the sale has been perfected;

(b) Where the property or mobile home has been sold upon the foreclosure of a mortgage, or under an express power of sale contained therein, executed by the person, or by another person under whom the person claims, and the title under the sale has been perfected;

(c) Where the property or mobile home has been sold under a power of sale granted by [NRS 107.080](#) to the trustee of a deed of trust executed by the person, or by another person under whom the person claims, and the title under such sale has been perfected; or

(d) Where the property or mobile home has been sold by the person, or by another person under whom the person claims, and the title under the sale has been perfected.

2. If the property has been sold as a residential foreclosure, a tenant or subtenant in actual occupation of the premises, other than a person whose name appears on the mortgage or deed, who holds over and continues in possession of real property or a mobile home in any of the cases described in paragraph (b) or (c) of subsection 1 may be removed as prescribed in [NRS 40.290](#) to [40.420](#), inclusive, after receiving a notice of the change of ownership of the real property or mobile home and after the expiration of a notice period beginning on the date the notice was received by the tenant or subtenant and expiring:

(a) For all periodic tenancies with a period of less than 1 month, after not less than the number of days in the period; and

(b) For all other periodic tenancies or tenancies at will, after not less than 60 days.

3. During the notice period described in subsection 2:

(a) The new owner has the rights, obligations and liabilities of the previous owner or landlord pursuant to [chapter 118A](#) of NRS under the lease or rental agreement which the previous owner or landlord entered into with the tenant or subtenant regarding the property; and

(b) The tenant or subtenant continues to have the rights, obligations and liabilities that the tenant or subtenant had pursuant to [chapter 118A](#) of NRS under the lease or rental agreement which the tenant or subtenant entered into with the previous owner or landlord regarding the property.

4. The notice described in subsection 2 must contain a statement:

(a) Providing the contact information of the new owner to whom rent should be remitted;

(b) Notifying the tenant or subtenant that the lease or rental agreement the tenant or subtenant entered into with the previous owner or landlord of the property continues in effect through the notice period described in subsection 2; and

(c) Notifying the tenant or subtenant that failure to pay rent to the new owner or comply with any other term of the agreement or applicable law constitutes a breach of the lease or rental agreement and may result in eviction proceedings.

5. If the property has been sold as a residential foreclosure in any of the cases described in paragraph (b) or (c) of subsection 1, no person may enter a record of eviction for a tenant or subtenant who vacates a property during the notice period described in subsection 2.

6. If the property has been sold as a residential foreclosure in any of the cases described in paragraphs (b) or (c) of subsection 1, nothing in this section shall be deemed to prohibit:

(a) The tenant from vacating the property at any time before the expiration of the notice period described in subsection 2 without any obligation to the new owner of a property purchased pursuant to a foreclosure sale or trustee's sale; or

(b) The new owner of a property purchased pursuant to a foreclosure sale or trustee's sale from:

(1) Negotiating a new purchase, lease or rental agreement with the tenant or subtenant; or

(2) Offering a payment to the tenant or subtenant in exchange for vacating the premises on a date earlier than the expiration of the notice period described in subsection 2.

7. This section does not apply to the tenant of a mobile home lot in a mobile home park.

8. As used in this section, "residential foreclosure" means the sale of a single family residence pursuant to [NRS 40.430](#) or under a power of sale granted by [NRS 107.080](#). As used in this subsection, "single family residence" means a structure that is comprised of not more than four units.

(Added to NRS by 1961, 412; A 1969, 263; 1979, 1880; [2009, 2784](#))

**NRS 40.260 Tenant of agricultural lands may hold over if not notified.** In all cases of tenancy upon agricultural land where the tenant has held over and retained possession for more than 60 days after the expiration of the tenant's term, without any demand of possession or notice to quit by the landlord, or the successor in estate of the landlord, if any there be, the tenant shall be deemed to be holding by permission of the landlord, or the successor in the estate of the landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during the year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of the tenant to hold for another year.

[1911 CPA § 647; RL § 5589; NCL § 9136]

**NRS 40.270 Tenant has similar remedies against subtenant.** A tenant may take proceedings similar to those prescribed in this chapter to obtain possession of the premises let to any subtenant in case of the subtenant's unlawful detention of the premises let by the tenant to the subtenant.

[1911 CPA § 648; RL § 5590; NCL § 9137]

**NRS 40.280 Service of notices to quit; proof required before issuance of order to remove.**

1. Except as otherwise provided in [NRS 40.253](#), the notices required by [NRS 40.251](#) to [40.260](#), inclusive, may be served:

(a) By delivering a copy to the tenant personally, in the presence of a witness;

(b) If the tenant is absent from the tenant's place of residence or from the tenant's usual place of business, by leaving a copy with a person of suitable age and discretion at either place and mailing a copy to the tenant at the tenant's place of residence or place of business; or

(c) If the place of residence or business cannot be ascertained, or a person of suitable age or discretion cannot be found there, by posting a copy in a conspicuous place on the leased property, delivering a copy to a person there residing, if the person can be found, and mailing a copy to the tenant at the place where the leased property is situated.

2. Service upon a subtenant may be made in the same manner as provided in subsection 1.

3. Before an order to remove a tenant is issued pursuant to subsection 5 of [NRS 40.253](#), a landlord shall file with the court a proof of service of any notice required by that section. Before a person may be removed as prescribed in [NRS 40.290](#) to [40.420](#), inclusive, a landlord shall file with the court proof of service of any notice required pursuant to [NRS 40.255](#). Except as otherwise provided in subsection 4, this proof must consist of:

(a) A statement, signed by the tenant and a witness, acknowledging that the tenant received the notice on a specified date;

(b) A certificate of mailing issued by the United States Postal Service; or

(c) The endorsement of a sheriff, constable or other process server stating the time and manner of service.

4. If service of the notice was not delivered in person to a tenant whose rent is reserved by a period of 1 week or less and the tenancy has not continued for more than 45 days, proof of service must include:

(a) A certificate of mailing issued by the United States Postal Service or by a private postal service to the landlord or the landlord's agent; or

(b) The endorsement of a sheriff or constable stating the:

(1) Time and date the request for service was made by the landlord or the landlord's agent;

(2) Time, date and manner of the service; and

(3) Fees paid for the service.

[1911 CPA § 649; RL § 5591; NCL § 9138]—(NRS A 1961, 413; 1967, 196; 1985, 231, 1418; 1987, 701; 1995, 1854; [2007, 1287](#); [2009, 2786](#))

**NRS 40.290 Parties defendant; persons bound by judgment.** No person other than the tenant of the premises and the subtenant, if there be one, in actual occupation of the premises when the action is commenced, need be made parties defendant in the proceeding, nor shall any proceeding abate nor the plaintiff be nonsuited for the nonjoinder of any person who might have been made a party defendant; but when it appears that any of the parties served with process or appearing in the proceeding is guilty of the offense charged, judgment must be rendered against the party. In case a person has become subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action.

[1911 CPA § 650; RL § 5592; NCL § 9139]

**NRS 40.300 Contents of complaint; issuance and service of summons; temporary writ of restitution; notice, hearing and bond.**

1. The plaintiff in his or her complaint, which shall be in writing, must set forth the facts on which the plaintiff seeks to recover, and describe the premises with reasonable certainty and may set forth therein any circumstances of fraud, force or violence which may have accompanied the alleged forcible entry, or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises or both. In case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent.

2. The summons shall be issued and served as in other cases, but the court, judge or justice of the peace may shorten the time within which the defendant shall be required to appear and defend the action, in which case the officer or person serving the summons shall change the prescribed form thereof to conform to the time of service as ordered; but where publication is necessary the court shall direct publication for a period of not less than 1 week.

3. At any time after the filing of the complaint and issuance of summons, the court, upon application therefor, may issue a temporary writ of restitution; provided:

(a) That the temporary writ of restitution shall not issue ex parte but only after the issuance and service of an order to show cause why a temporary writ of restitution shall not be issued and after the defendant has been given an opportunity to oppose the issuance of the temporary writ of restitution.

(b) That the temporary writ of restitution shall not issue until the court has had an opportunity to ascertain the facts sufficiently to enable it to estimate the probable loss to the defendant and fix the amount of a bond to indemnify the party or parties against whom the temporary writ may be issued.

(c) That the temporary writ of restitution shall not issue until there has been filed with the approval of the court a good

and sufficient bond of indemnification in the amount fixed by the court.

[1911 CPA § 651; A 1939, 171; 1951, 251]

**NRS 40.310 Issue of fact to be tried by jury if proper demand made.** Whenever an issue of fact is presented by the pleadings, it shall be tried by a jury, if proper demand is made pursuant to the Nevada Rules of Civil Procedure or the Justice Court Rules of Civil Procedure.

[1911 CPA § 652; RL § 5594; NCL § 9141]—(NRS A 1975, 1203)

**NRS 40.320 Proof required of plaintiff and defendant on trial.**

1. On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that the plaintiff was peaceably in the actual possession at the time of the forcible entry, or was entitled to possession at the time of the forcible detainer.

2. The defendant may show in defense that the defendant or the defendant's ancestors, or those whose interest in such premises the defendant claims, have been in the quiet possession thereof for the space of 1 whole year together next before the commencement of the proceedings, and that the defendant's interest therein is not then ended or determined, and such showing is a bar to the proceedings.

[1911 CPA § 653; RL § 5595; NCL § 9142]

**NRS 40.330 Amendment of complaint to conform to proof; continuance.** When, upon the trial of any proceeding under [NRS 40.220](#) to [40.420](#), inclusive, it appears from the evidence that the defendant has been guilty of either a forcible entry or forcible or unlawful detainer, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs. Such amendment must be without any imposition of terms. No continuance must be permitted upon account of such amendment, unless the defendant, by affidavit filed, shows to the satisfaction of the court good cause therefor.

[1911 CPA § 654; RL § 5596; NCL § 9143]

**NRS 40.340 Adjournments.** The court or justice of the peace may for good cause shown adjourn the trial of any cause under [NRS 40.220](#) to [40.420](#), inclusive, not exceeding 5 days; and when the defendant, or the defendant's agent or attorney, shall make oath that the defendant cannot safely proceed to trial for want of some material witness, naming that witness, stating the evidence that the defendant expects to obtain, showing that the defendant has used due diligence to obtain such witness and believes that if an adjournment be allowed the defendant will be able to procure the attendance of such witness, or the witness's deposition, in time to produce the same upon the trial, in which case, if such person or persons will give bond, with one or more sufficient sureties, conditioned to pay the complainant for all rent that may accrue during the pending of such suit, and all costs and damages consequent upon such adjournment, the court or justice of the peace shall adjourn the cause for such reasonable time as may appear necessary, not exceeding 30 days.

[1911 CPA § 655; RL § 5597; NCL § 9144]

**NRS 40.350 Trial not to be adjourned when complainant admits evidence in affidavit would be given.** If the complainant admit that the evidence stated in the affidavit mentioned in [NRS 40.340](#) would be given by such witness, and agree that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be adjourned.

[1911 CPA § 656; RL § 5598; NCL § 9145]

**NRS 40.360 Judgment; damages; execution and enforcement.**

1. Judgment. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and, if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

2. Damages. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, and any amount found due the plaintiff by reason of waste of the premises by the defendant during the tenancy, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the rent and for three times the amount of the damages thus assessed.

3. Execution and enforcement. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant be restored to the tenant's estate; but, if payment, as herein provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

[1911 CPA § 657; RL § 5599; NCL § 9146]

**NRS 40.370 Verification of complaint and answer.** The complaint and answer must be verified.

[1911 CPA § 658; RL § 5600; NCL § 9147]

**NRS 40.380 Provisions governing appeals.** Either party may, within 10 days, appeal from the judgment rendered. But an appeal by the defendant shall not stay the execution of the judgment, unless, within the 10 days, the defendant shall execute and file with the court or justice the defendant's undertaking to the plaintiff, with two or more sureties, in an amount to be fixed by the court or justice, but which shall not be less than twice the amount of the judgment and costs, to the effect that, if the judgment appealed from be affirmed or the appeal be dismissed, the appellant will pay the judgment and the cost of appeal, the value of the use and occupation of the property, and damages justly accruing to the plaintiff during the pendency of the appeal. Upon taking the appeal and filing the undertaking, all further proceedings in the case shall be stayed.

[1911 CPA § 659; RL § 5601; NCL § 9148]

**NRS 40.385 Stay of execution upon appeal; duty of tenant who retains possession of premises to pay rent during stay.** Upon an appeal from an order entered pursuant to [NRS 40.253](#):

1. Except as otherwise provided in this subsection, a stay of execution may be obtained by filing with the trial court a bond in the amount of \$250 to cover the expected costs on appeal. In an action concerning a lease of commercial property or any other property for which the monthly rent exceeds \$1,000, the court may, upon its own motion or that of a party, and upon a showing of good cause, order an additional bond to be posted to cover the expected costs on appeal. A surety upon the bond submits to the jurisdiction of the appellate court and irrevocably appoints the clerk of that court as the surety's agent upon whom papers affecting the surety's liability upon the bond may be served. Liability of a surety may be enforced, or the bond may be released, on motion in the appellate court without independent action.

2. A tenant who retains possession of the premises that are the subject of the appeal during the pendency of the appeal shall pay to the landlord rent in the amount provided in the underlying contract between the tenant and the landlord as it becomes due. If the tenant fails to pay such rent, the landlord may initiate new proceedings for a summary eviction by serving the tenant with a new notice pursuant to [NRS 40.253](#).

(Added to NRS by 1997, 3510)

**NRS 40.390 Appellate court not to dismiss or quash proceedings for want of form.** In all cases of appeal under [NRS 40.220](#) to [40.420](#), inclusive, the appellate court shall not dismiss or quash the proceedings for want of form, provided the proceedings have been conducted substantially according to the provisions of [NRS 40.220](#) to [40.420](#), inclusive; and amendments to the complaint, answer or summons, in matters of form only, may be allowed by the court at any time before final judgment upon such terms as may be just; and all matters of excuse, justification or avoidance of the allegations in the complaint may be given in evidence under the answer.

[1911 CPA § 660; RL § 5602; NCL § 9149]

**NRS 40.400 Rules of practice.** The provisions of NRS, Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to civil actions, appeals and new trials, so far as they are not inconsistent with the provisions of [NRS 40.220](#) to [40.420](#), inclusive, apply to the proceedings mentioned in those sections.

[1911 CPA § 661; RL § 5603; NCL § 9150]

**NRS 40.420 Form of writ of restitution; execution.**

1. The writ of restitution issued by a justice of the peace must be substantially in the following form:

The State of Nevada to the sheriff or constable of the county of ....., greeting: Whereas, A.B., of the county of ....., at a court of inquiry of an unlawful holding over of (lands) (tenements) (a mobile home), and other possessions, held at my office (stating the place), in the county aforesaid, on the ..... day of ....., A.D. ...., before me, a justice of the peace for the county aforesaid, by the consideration of the court, has recovered judgment against C.D., to have restitution of (here describe the premises as in the complaint). You are therefore commanded, that taking with you the force of the county, if necessary, you cause C.D. to be immediately removed from the premises, and A.B. to have peaceable restitution of the premises. You are also commanded that of the goods and chattels of C.D., within said county, which are not exempt from execution, you cause to be made the sum of ..... dollars for the plaintiff, together with the costs of suit endorsed hereon, and make return of this writ within 30 days after this date. Given under my hand, this ..... day of ....., A.D. .... E.F., justice of the peace.

2. The sheriff or constable shall execute the writ in the same manner as required by the provisions of [chapter 21](#) of NRS for writs of execution.

[1911 CPA § 663; RL § 5605; NCL § 9152]—(NRS A 1969, 264; 1989, 1144)

**NRS 40.425 Notice of execution on writ of restitution.**

1. Execution on the writ of restitution may occur only if the sheriff serves the judgment debtor with notice of the execution and a copy of the writ in the manner described in [NRS 21.076](#). The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions. The clerk of the court shall attach the notice to the writ at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be in the form and served in the manner provided for execution on judgments pursuant to [NRS 21.075](#) and [21.076](#).

(Added to NRS by 1989, 1144)

## ACTIONS FOR FORECLOSURE OF REAL MORTGAGES

**NRS 40.430 Action for recovery of debt secured by mortgage or other lien; “action” defined.**

1. Except in cases where a person proceeds under subsection 2 of [NRS 40.495](#) or subsection 1 of [NRS 40.512](#), there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of [NRS 40.430](#) to [40.459](#), inclusive. In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in [NRS 40.462](#).

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. At any time not later than 5 business days before the date of sale directed by the court, if the deficiency resulting in the action for the recovery of the debt has arisen by failure to make a payment required by the mortgage or other lien, the deficiency may be made good by payment of the deficient sum and by payment of any costs, fees and expenses incident to making the deficiency good. If a deficiency is made good pursuant to this subsection, the sale may not occur.

4. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated, and if the encumbered land is situated in two or more counties, the court shall direct the sheriff of one of the counties to conduct the sale with like proceedings and effect as if the whole of the encumbered land were situated in that county.

5. Within 30 days after a sale of property is conducted pursuant to this section, the sheriff who conducted the sale shall record the sale of the property in the office of the county recorder of the county in which the property is located.

6. As used in this section, an “action” does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in [NRS 32.015](#).

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under [NRS 40.750](#), or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to [NRS 107.080](#).

(f) For the exercise of any right or remedy authorized by [chapter 104](#) of NRS or by the Uniform Commercial Code as enacted in any other state.

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of [NRS 107.095](#).

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to [chapter 147](#) of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to [NRS 40.507](#) or [40.508](#).

(o) Which is exempted from the provisions of this section by specific statute.

(p) To recover costs of suit, costs and expenses of sale, attorneys’ fees and other incidental relief in connection with any action authorized by this subsection.

[1911 CPA § 559; RL § 5501; NCL § 9048]—(NRS A 1965, 915; 1969, 572; 1987, 1345; 1989, 888, 1768; 1993, 151; [2009, 1005, 1329](#))

**NRS 40.433 “Mortgage or other lien” defined.** As used in [NRS 40.430](#) to [40.459](#), inclusive, unless the context otherwise requires, a “mortgage or other lien” includes a deed of trust, but does not include a lien which arises pursuant to [chapter 108](#) of NRS, pursuant to an assessment under [chapter 116](#), [117](#), [119A](#) or [278A](#) of NRS or pursuant to a judgment or decree of any court of competent jurisdiction.

(Added to NRS by 1989, 1767; A 1991, 580)

**NRS 40.435 Judicial proceedings in violation of [NRS 40.430](#); provisions of [NRS 40.430](#) as an affirmative defense.**

1. The commencement of or participation in a judicial proceeding in violation of [NRS 40.430](#) does not forfeit any of the rights of a secured creditor in any real or personal collateral, or impair the ability of the creditor to realize upon any real or personal collateral, if the judicial proceeding is:

(a) Stayed or dismissed before entry of a final judgment; or

(b) Converted into an action which does not violate [NRS 40.430](#).

2. If the provisions of [NRS 40.430](#) are timely interposed as an affirmative defense in such a judicial proceeding, upon

the motion of any party to the proceeding the court shall:

- (a) Dismiss the proceeding without prejudice; or
- (b) Grant a continuance and order the amendment of the pleadings to convert the proceeding into an action which does not violate [NRS 40.430](#).

3. The failure to interpose, before the entry of a final judgment, the provisions of [NRS 40.430](#) as an affirmative defense in such a proceeding waives the defense in that proceeding. Such a failure does not affect the validity of the final judgment, but entry of the final judgment releases and discharges the mortgage or other lien.

4. As used in this section, "final judgment" means a judgment which imposes personal liability on the debtor for the payment of money and which may be appealed under the Nevada Rules of Appellate Procedure.

(Added to NRS by 1989, 1767)

**NRS 40.440 Disposition of surplus money.** If there is surplus money remaining after payment of the amount due on the mortgage or other lien, with costs, the court may cause the same to be paid to the person entitled to it pursuant to [NRS 40.462](#), and in the meantime may direct it to be deposited in court.

[1911 CPA § 560; RL § 5502; NCL § 9049]—(NRS A 1989, 888, 1769)

**NRS 40.450 Proceedings when debt secured falls due at different times.** If the debt for which the mortgage or other lien on real property is held is not all due, as soon as a sufficient amount of the property has been sold to pay the amount due, with costs, the sale shall cease. Afterwards, as often as more becomes due for principal or interest, the court may, on motion, order more to be sold. However, if the property cannot be sold in portions without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid, with a rebate of interest where such a rebate is proper.

[1911 CPA § 561; RL § 5503; NCL § 9050]—(NRS A 1989, 1769)

### FORECLOSURE SALES AND DEFICIENCY JUDGMENTS

**NRS 40.451 "Indebtedness" defined.** As used in [NRS 40.451](#) to [40.463](#), inclusive, "indebtedness" means the principal balance of the obligation secured by a mortgage or other lien on real property, together with all interest accrued and unpaid prior to the time of foreclosure sale, all costs and fees of such a sale, all advances made with respect to the property by the beneficiary, and all other amounts secured by the mortgage or other lien on the real property in favor of the person seeking the deficiency judgment. Such amount constituting a lien is limited to the amount of the consideration paid by the lienholder.

(Added to NRS by 1969, 572; A 1989, 1769)

**NRS 40.453 Waiver of rights in documents relating to sale of real property against public policy and unenforceable; exception.** Except as otherwise provided in [NRS 40.495](#):

1. It is hereby declared by the Legislature to be against public policy for any document relating to the sale of real property to contain any provision whereby a mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness secured thereby, waives any right secured to the person by the laws of this state.

2. A court shall not enforce any such provision.

(Added to NRS by 1969, 573; A 1973, 911; 1985, 371; 1987, 1643; 1993, 152)

**NRS 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust; exceptions.**

1. Except as otherwise provided in subsection 3, upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to [NRS 107.080](#), respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale or trustee's sale of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee's sale.

3. If the judgment creditor or the beneficiary of the deed of trust is a financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust, even if there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust, if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or trustee's sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust; and

(d) The debtor or grantor did not refinance the mortgage or deed of trust after securing it.

4. As used in this section, "financial institution" has the meaning ascribed to it in [NRS 363A.050](#).

(Added to NRS by 1969, 573; A 1979, 450; 1985, 371; 1987, 1345; [2009, 1330](#))

**NRS 40.457 Hearing before award of deficiency judgment; appraisal of property sold.**

1. Before awarding a deficiency judgment under [NRS 40.455](#), the court shall hold a hearing and shall take evidence presented by either party concerning the fair market value of the property sold as of the date of foreclosure sale or trustee's sale. Notice of such hearing shall be served upon all defendants who have appeared in the action and against whom a deficiency judgment is sought, or upon their attorneys of record, at least 15 days before the date set for hearing.

2. Upon application of any party made at least 10 days before the date set for the hearing the court shall, or upon its own motion the court may, appoint an appraiser to appraise the property sold as of the date of foreclosure sale or trustee's sale. Such appraiser shall file with the clerk the appraisal, which is admissible in evidence. The appraiser shall take an oath that the appraiser has truly, honestly and impartially appraised the property to the best of the appraiser's knowledge and ability. Any appraiser so appointed may be called and examined as a witness by any party or by the court. The court shall fix a reasonable compensation for the appraiser, but the appraiser's fee shall not exceed similar fees for similar services in the county where the encumbered land is situated.

(Added to NRS by 1969, 573)

**NRS 40.459 Limitations on amount of money judgment.** After the hearing, the court shall award a money judgment against the debtor, guarantor or surety who is personally liable for the debt. The court shall not render judgment for more than:

1. The amount by which the amount of the indebtedness which was secured exceeds the fair market value of the property sold at the time of the sale, with interest from the date of the sale; or

2. The amount which is the difference between the amount for which the property was actually sold and the amount of the indebtedness which was secured, with interest from the date of sale,  
 È whichever is the lesser amount.

(Added to NRS by 1969, 573; A 1985, 371; 1987, 1644; 1989, 1770; 1993, 152)

**NRS 40.462 Distribution of proceeds of foreclosure sale.**

1. Except as otherwise provided by specific statute, this section governs the distribution of the proceeds of a foreclosure sale. The provisions of [NRS 40.455](#), [40.457](#) and [40.459](#) do not affect the right to receive those proceeds, which vests at the time of the foreclosure sale. The purchase of any interest in the property at the foreclosure sale, and the subsequent disposition of the property, does not affect the right of the purchaser to the distribution of proceeds pursuant to paragraph (c) of subsection 2 of this section, or to obtain a deficiency judgment pursuant to [NRS 40.455](#), [40.457](#) and [40.459](#).

2. The proceeds of a foreclosure sale must be distributed in the following order of priority:

(a) Payment of the reasonable expenses of taking possession, maintaining, protecting and leasing the property, the costs and fees of the foreclosure sale, including reasonable trustee's fees, applicable taxes and the cost of title insurance and, to the extent provided in the legally enforceable terms of the mortgage or lien, any advances, reasonable attorney's fees and other legal expenses incurred by the foreclosing creditor and the person conducting the foreclosure sale.

(b) Satisfaction of the obligation being enforced by the foreclosure sale.

(c) Satisfaction of obligations secured by any junior mortgages or liens on the property, in their order of priority.

(d) Payment of the balance of the proceeds, if any, to the debtor or the debtor's successor in interest.

È If there are conflicting claims to any portion of the proceeds, the person conducting the foreclosure sale is not required to distribute that portion of the proceeds until the validity of the conflicting claims is determined through interpleader or otherwise to the person's satisfaction.

3. A person who claims a right to receive the proceeds of a foreclosure sale pursuant to paragraph (c) of subsection 2 must, upon the written demand of the person conducting the foreclosure sale, provide:

(a) Proof of the obligation upon which the claimant claims a right to the proceeds; and

(b) Proof of the claimant's interest in the mortgage or lien, unless that proof appears in the official records of a county in which the property is located.

È Such a demand is effective upon personal delivery or upon mailing by registered or certified mail, return receipt requested, to the last known address of the claimant. Failure of a claimant to provide the required proof within 15 days after the effective date of the demand waives the claimant's right to receive those proceeds.

4. As used in this section, "foreclosure sale" means the sale of real property to enforce an obligation secured by a mortgage or lien on the property, including the exercise of a trustee's power of sale pursuant to [NRS 107.080](#).

(Added to NRS by 1989, 887)

**NRS 40.463 Agreement for assistance in recovering proceeds of foreclosure sale due to debtor or successor in interest; requirements for enforceable agreement; fee must be reasonable.**

1. Except as otherwise provided in this section, a debtor or the debtor's successor in interest may enter into an agreement with a third party that provides for the third party to assist in the recovery of any balance of the proceeds of a foreclosure sale due to the debtor or the debtor's successor in interest pursuant to paragraph (d) of subsection 2 of [NRS 40.462](#).

2. An agreement pursuant to subsection 1:

(a) Must:

(1) Be in writing;

(2) Be signed by the debtor or the debtor's successor in interest; and

(3) Contain an acknowledgment of the signature of the debtor or the debtor's successor in interest by a notary public; and

(b) May not be entered into less than 30 days after the date on which the foreclosure sale was conducted.

3. Any agreement entered into pursuant to this section that does not comply with subsection 2 is void and unenforceable.

4. Any fee charged by a third party for services provided pursuant to an agreement entered into pursuant to this section must be reasonable. A fee that exceeds \$2,500, excluding attorney's fees and costs, is presumed to be unreasonable. A court shall not enforce an obligation to pay any unreasonable fee, but may require a debtor to pay a reasonable fee that is less than the amount set forth in the agreement.

5. A third party may apply to the court for permission to charge a fee that exceeds \$2,500. Any third party applying to the court pursuant to this subsection has the burden of establishing to the court that the fee is reasonable.

6. This section does not preclude a debtor or the debtor's successor in interest from contesting the reasonableness of any fee set forth in an agreement entered into pursuant to this section.

7. As used in this section:

(a) "Creditor" means a person due an obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to [40.463](#), inclusive.

(b) "Debtor" means a person, or the successor in interest of a person, who owes an obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to [40.463](#), inclusive.

(c) "Third party" means a person who is neither the debtor nor the creditor of a particular obligation being enforced by a foreclosure sale conducted pursuant to [NRS 40.451](#) to [40.463](#), inclusive.

(Added to NRS by [2007, 107](#))

### MAINTENANCE OF PROPERTY ACQUIRED AT FORECLOSURE SALE

#### **NRS 40.464 Duty to maintain vacant residential property acquired at foreclosure sale; notice of violation; proceedings for enforcement; civil penalties.**

1. Any vacant residential property purchased or acquired by a person at a foreclosure sale pursuant to [NRS 40.430](#) must be maintained by that person in accordance with subsection 2.

2. In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:

(a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;

(b) Preventing trespassers from remaining on the property;

(c) Preventing mosquito larvae from growing in standing water; and

(d) Preventing any other condition that creates a public nuisance.

3. If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:

(a) Describing the violation;

(b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and

(c) Informing the person that the person may contest the allegation pursuant to subsection 4.

4. If a person, within 5 days after a notice is mailed to the person pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.

5. Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:

(a) Commencing on the day following the expiration of the period of time described in subsection 3; or

(b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.

6. The applicable governmental entity may waive or extend the period of time described in subsection 3 if:

(a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and

(b) The violation cannot be corrected in the period of time described in subsection 3.

7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.

8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.

9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.

10. As used in this section, "applicable governmental entity" means:

(a) If the property is within the boundaries of a city, the governing body of the city; and

(b) If the property is not within the boundaries of a city, the board of county commissioners of the county in which the property is located.

(Added to NRS by [2009, 2783](#))

### RIGHTS OF GUARANTOR, SURETY OR OBLIGOR IN REAL PROPERTY

**NRS 40.465 "Indebtedness" defined.** As used in [NRS 40.475](#), [40.485](#) and [40.495](#), "indebtedness" means the

principal balance of the obligation, together with all accrued and unpaid interest, and those costs, fees, advances and other amounts secured by the mortgage or lien upon real property.

(Added to NRS by 1987, 1643; A 1989, 1001)

**NRS 40.475 Remedy against mortgagor or grantor; assignment of creditor's rights to guarantor, surety or obligor.** Upon full satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor is entitled to enforce every remedy which the creditor then has against the mortgagor or grantor of the mortgage or lien upon real property, and is entitled to an assignment from the creditor of all of the rights which the creditor then has by way of security for the performance of the indebtedness.

(Added to NRS by 1987, 1643)

**NRS 40.485 Interest in proceeds of secured indebtedness upon partial satisfaction of indebtedness.** Immediately upon partial satisfaction by a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, of the indebtedness secured by a mortgage or lien upon real property, the paying guarantor, surety or other obligor automatically, by operation of law and without further action, receives an interest in the proceeds of the indebtedness secured by the mortgage or lien to the extent of the partial satisfaction, subject only to the creditor's prior right to recover the balance of the indebtedness owed by the mortgagor or grantor.

(Added to NRS by 1987, 1643)

**NRS 40.495 Waiver of rights; separate action to enforce obligation; available defenses.**

1. The provisions of [NRS 40.475](#) and [40.485](#) may be waived by the guarantor, surety or other obligor only after default.

2. Except as otherwise provided in subsection 4, a guarantor, surety or other obligor, other than the mortgagor or grantor of a deed of trust, may waive the provisions of [NRS 40.430](#). If a guarantor, surety or other obligor waives the provisions of [NRS 40.430](#), an action for the enforcement of that person's obligation to pay, satisfy or purchase all or part of an indebtedness or obligation secured by a mortgage or lien upon real property may be maintained separately and independently from:

(a) An action on the debt;

(b) The exercise of any power of sale;

(c) Any action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby; and

(d) Any other proceeding against a mortgagor or grantor of a deed of trust.

3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of [NRS 40.451](#) to [40.463](#), inclusive.

4. The provisions of [NRS 40.430](#) may not be waived by a guarantor, surety or other obligor if the mortgage or lien:

(a) Secures an indebtedness for which the principal balance of the obligation was never greater than \$500,000;

(b) Secures an indebtedness to a seller of real property for which the obligation was originally extended to the seller for any portion of the purchase price;

(c) Is secured by real property which is used primarily for the production of farm products as of the date the mortgage or lien upon the real property is created; or

(d) Is secured by real property upon which:

(1) The owner maintains the owner's principal residence;

(2) There is not more than one residential structure; and

(3) Not more than four families reside.

(Added to NRS by 1987, 1643; A 1989, 1001)

**ENVIRONMENTAL IMPAIRMENT OF REAL COLLATERAL OF SECURED LENDER**

**NRS 40.501 Definitions.** As used in [NRS 40.501](#) to [40.512](#), inclusive, the words and terms defined in [NRS 40.502](#) to [40.506](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.502 "Environmental provision" defined.** "Environmental provision" means any written representation, warranty, indemnity, promise or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, future or threatened release of any hazardous substance from, in, into or onto real collateral, or to past, present or future compliance with any law relating thereto, made by a debtor in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor, whether or not the representation, warranty, indemnity, promise or covenant is or was contained in or secured by the mortgage and whether or not the mortgage has been discharged, reconveyed or foreclosed upon.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.503 "Environmentally impaired" defined.** Real collateral is "environmentally impaired" if the estimated costs to clean up and remedy a past, present or threatened release of any hazardous substance from, in, into or onto it exceeds 10 percent of the total indebtedness owed to the secured lender secured by the collateral.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.504 “Hazardous substance” defined.** “Hazardous substance” means:

1. An element, compound, mixture, solution, material or substance whose use, possession, transportation, storage, release, discharge or disposal is regulated pursuant to [chapter 444](#), [445A](#), [445B](#), [459](#), [477](#), [590](#) or [618](#) of NRS or the Uniform Fire Code (1988 edition);
2. An element, compound, mixture, solution, material or substance designated as a hazardous substance pursuant to 42 U.S.C. § 9602 and an element, compound, mixture, solution, material or substance described in 42 U.S.C. § 9601(14);
3. An element, compound, mixture, solution, material or substance listed as a hazardous waste in, or having the characteristics identified in, 42 U.S.C. § 6921 on January 1, 1993, except any waste for which regulation under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§ 6901 et seq.) has been suspended by an act of Congress; and
4. Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, synthetic oil, synthetic gas usable for fuel or any mixture thereof.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.505 “Release” defined.** “Release” means a spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping or disposing of a hazardous substance into the environment, including continuing migration into or through the soil, surface water or groundwater.

(Added to NRS by 1993, 153; A 1995, 510)

**NRS 40.506 “Secured lender” defined.** “Secured lender” means the holder of an obligation secured by a mortgage.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.507 Right of entry and inspection of real collateral.**

1. A secured lender may enter and inspect real collateral for the purpose of determining the existence, location, nature and magnitude of any past, present or threatened release or presence of a hazardous substance from, in, into or onto it:

(a) Upon reasonable belief of the existence of a past, present or threatened release or the presence of any hazardous substance from, in, into or onto it not previously disclosed in writing to the secured lender in conjunction with the making, renewal or modification of a loan, extension of credit, guaranty or other obligation involving the debtor; or

(b) After the commencement of a trustee’s sale or judicial foreclosure proceedings against the real collateral.

2. A secured lender shall not abuse the right of entry and inspection or use it to harass the debtor or tenant of the property. Except in case of an emergency, when the debtor or tenant of the property has abandoned the premises, or if it is impracticable to do so, a secured lender shall give the debtor or tenant of the property reasonable notice of intent to enter, and enter only during the debtor’s or tenant’s normal business hours. Twenty-four hours’ notice is presumed to be reasonable in the absence of evidence to the contrary.

3. If a secured lender is refused the right of entry and inspection by the debtor or tenant of the property, or is otherwise unable to enter and inspect the property without a breach of the peace, the secured lender may, upon petition, obtain an order from a court of competent jurisdiction to exercise the secured lender’s rights under subsection 1.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.508 Action by secured lender concerning environmental provision.** A secured lender may bring a separate action for a breach of an environmental provision, to recover damages for the breach or for the enforcement of an environmental provision.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.509 Limitation on amount of damages recoverable in action concerning environmental provision; recovery of interest.**

1. Unless the environmental provision expressly permits a different or greater recovery or subsection 2 permits the addition of interest, the damages recoverable by a secured lender in an action pursuant to [NRS 40.508](#) are limited to the sum of reimbursement or indemnification for:

(a) If the secured lender acted pursuant to an order of any federal, state or local governmental agency relating to the cleaning up, remedying or other responsive action required by applicable law which is anticipated by the environmental provision, all amounts reasonably advanced in good faith by the secured lender in connection therewith;

(b) If the secured lender did not act pursuant to such an order, those costs relating to a reasonable cleaning up, remedying or other responsive action concerning hazardous substances, performed in good faith, which is anticipated by the environmental provision;

(c) All liabilities of the secured lender to any third party relating to the breach, unless the secured lender had actual knowledge of the environmental condition which is the basis of the claim for indemnification before entering into the transaction in which the environmental provision was given; and

(d) Costs, attorney’s fees and other incidental relief.

2. If the parties have so agreed, the secured lender may recover interest on the amount advanced by the secured lender to cure or mitigate the breach.

(Added to NRS by 1993, 154; A 1995, 510)

**NRS 40.511 Exceptions to applicability of [NRS 40.507](#) and [40.508](#).** [NRS 40.507](#) and [40.508](#) do not apply if the real

collateral is a unit put to residential use in a common-interest community or is real property upon which:

1. The owner maintains the owner's principal residence;
2. There is not more than one residential structure; and
3. Not more than four families reside.

(Added to NRS by 1993, 155; A 1995, 510)

**NRS 40.512 Environmental impairment of real collateral: Waiver of lien; notice of waiver; exception; recording of waiver.**

1. If real collateral is environmentally impaired and the debtor's obligation is in default, a secured lender may:

(a) Waive the secured lender's lien as to all of the real collateral and proceed as an unsecured creditor, including reduction of the secured lender's claim against the debtor to judgment and any other rights and remedies permitted by law; or

(b) Waive the secured lender's lien in accordance with paragraph (a) as to that part of the real collateral which is environmentally impaired and proceed against the unimpaired real collateral.

2. To waive the secured lender's lien against all or part of the environmentally impaired real collateral, the secured lender must, before commencement of any action, record with the county recorder of the county where the real collateral is located a notice of intent to waive the lien and mail a copy thereof, by registered or certified mail, return receipt requested, with postage prepaid, to the debtor, to the person who holds the title of record on the date of the notice, and to those persons with an interest, as defined in [NRS 107.090](#), whose interest or claimed interest is subordinate to the secured lender's lien, at their respective addresses, if known, otherwise to the address of the real collateral. In the case of a partial waiver the notice of intent to waive may be contained in a notice of default and election to sell. The notice of intent to waive must contain:

(a) A legal description of the environmentally impaired real collateral;

(b) A statement that the secured lender intends to proceed against the debtor under the applicable paragraph of subsection 1; and

(c) If the secured lender is proceeding under paragraph (b) of subsection 1, a statement that the secured lender will proceed against the unimpaired property, which may result in a judgment for deficiency against the debtor as a result of diminution in value of the collateral because of the exclusion of the environmentally impaired portion.

3. A secured lender may not waive the secured lender's lien as a result of any environmental impairment if the secured lender had actual knowledge of the environmental impairment at the time the lien was created. In determining whether a secured lender had such knowledge, the report of any person legally entitled to prepare the report with respect to the existence or absence of any environmental impairment is prima facie evidence of the existence or absence, as the case may be, of any environmental impairment.

4. A waiver made by a secured lender pursuant to this section is not final or conclusive until a final judgment, as defined in subsection 4 of [NRS 40.435](#), has been obtained. If the waiver covers the full extent of the collateral, the secured lender shall immediately thereafter cause the secured lender's lien to be released by recording the waiver in the same manner as the lien was recorded.

(Added to NRS by 1993, 155; A 1995, 510)

## PROCEEDINGS TO ESTABLISH TERMINATION OF LIFE ESTATES

**NRS 40.515 Petition, notice, hearing and order.** If any person has died, or shall hereafter die, who at the time of the person's death was the owner of a life estate which terminates by reason of the person's death, any person interested in the property, or in the title thereto, in which such life estate was held, may file in the district court of the county in which the property is situated, the person's verified petition, setting forth such facts, and thereupon and after such notice by publication or otherwise, as the court or judge may order, the court or judge shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that such life estate of such deceased person absolutely terminated by reason of the person's death, the court or judge shall make an order to that effect, and thereupon a certified copy of such order may be recorded in the office of the county recorder.

[1911 CPA § 642; RL § 5584; NCL § 9131]—(Substituted in revision for NRS 40.460)

## METHODS OF TERMINATION OF INTERESTS OF DECEASED PERSONS IN PROPERTY

**NRS 40.525 Petition; notice; hearing and order; alternative method.**

1. If title or an interest in real or personal property is affected by the death of any person, any other person who claims any interest in the real or personal property, if the other person's interest is affected by the death of the deceased person, or the State of Nevada, may file in the district court of any county in which any part of the real or personal property is situated a verified petition setting forth those facts and particularly describing the real or personal property, the interest of the petitioner and the interest of the deceased person therein.

2. The clerk shall set the petition for hearing by the court. Notice of hearing of the petition must be mailed, by certified mail, return receipt requested, postage prepaid, to the heirs at law of the deceased person at their places of business or residences, if known, and if not, by publication for at least 3 successive weeks in such newspaper as the court orders. The clerk shall send a copy of the notice of hearing or of the affidavit to the Department of Health and Human Services by certified mail, return receipt requested, postage prepaid, if the State is not the petitioner, at the time notice is mailed to the heirs at law or the notice is published. Failure on the part of any such heir at law to contest the petition precludes any such heir at law from thereafter contesting the validity of the joint interest or its creation or termination.

3. The court shall take evidence for or against the petition, and may render judgment thereon establishing the fact of the death and the termination of the interest of the deceased person in the real or personal property described in the petition.

4. A certified copy of the decree may be recorded in the office of the recorder of each county in which any part of the real or personal property is situated.

5. As an alternative method of terminating the interest of the deceased person, if title or an interest in real or personal property held in joint tenancy or as community property with right of survivorship is affected by the death of a joint tenant or spouse, any person who has knowledge of the facts may record in the office of the county recorder in the county where the property is situated an affidavit meeting the requirements of [NRS 111.365](#), accompanied by a certified copy of the death certificate of the deceased person.

[1:18:1939; A 1951, 172]—(NRS A 1963, 802; 1965, 665, 1004; 1983, 666; 1991, 457; 1995, 2569; [2001, 1750](#); [2003, 876](#))

**NRS 40.535 Affidavit or petition may be filed in probate proceeding.** Any affidavit or petition, such as described in [NRS 40.525](#), may be filed as a part of any probate proceeding.

[1(a):18:1939; added 1951, 172]—(NRS A 1965, 665)—(Substituted in revision for NRS 40.480)

## ACTIONS RESULTING FROM CONSTRUCTIONAL DEFECT

### General Provisions

**NRS 40.600 Definitions.** As used in [NRS 40.600](#) to [40.695](#), inclusive, unless the context otherwise requires, the words and terms defined in [NRS 40.603](#) to [40.634](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1995, 2539; A 1997, 2716; [1999, 1440](#); [2001 Special Session, 67](#); [2003, 2041](#))

**NRS 40.603 “Amend a complaint to add a cause of action for a constructional defect” defined.** “Amend a complaint to add a cause of action for a constructional defect” means any act by which a claimant seeks to:

1. Add to the pleadings a defective component that is not otherwise included in the pleadings and for which a notice was not previously given; or

2. Amend the pleadings in such a manner that the practical effect is the addition of a constructional defect that is not otherwise included in the pleadings.

Ê The term does not include amending a complaint to plead a different cause for a constructional defect which is included in the same action.

(Added to NRS by [2003, 2034](#))

**NRS 40.605 “Appurtenance” defined.**

1. “Appurtenance” means a structure, installation, facility, amenity or other improvement that is appurtenant to or benefits one or more residences, but is not a part of the dwelling unit. The term includes, without limitation, the parcel of real property, recreational facilities, golf courses, walls, sidewalks, driveways, landscaping, common elements and limited common elements other than those described in [NRS 116.2102](#), and other structures, installations, facilities and amenities associated with or benefiting one or more residences.

2. As used in this section:

(a) “Common elements” has the meaning ascribed to it in [NRS 116.017](#).

(b) “Limited common element” has the meaning ascribed to it in [NRS 116.059](#).

(Added to NRS by 1995, 2539; A 1997, 2716; [1999, 1440](#))

**NRS 40.610 “Claimant” defined.** “Claimant” means:

1. An owner of a residence or appurtenance;

2. A representative of a homeowner’s association that is responsible for a residence or appurtenance and is acting within the scope of the representative’s duties pursuant to [chapter 116](#) or [117](#) of NRS; or

3. Each owner of a residence or appurtenance to whom a notice applies pursuant to subsection 4 of [NRS 40.645](#).

(Added to NRS by 1995, 2539; A 1997, 2717; [2003, 2041](#))

**NRS 40.615 “Constructional defect” defined.** “Constructional defect” means a defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance:

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

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

3. Which is not completed in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of design, construction, manufacture, repair or landscaping; or

4. Which presents an unreasonable risk of injury to a person or property.

(Added to NRS by 1995, 2539; A [2003, 2041](#))

**NRS 40.620 “Contractor” defined.** “Contractor” means a person who, with or without a license issued pursuant to

[chapter 624](#) of NRS, by himself or herself or through the person's agents, employees or subcontractors:

1. Develops, constructs, alters, repairs, improves or landscapes a residence, appurtenance or any part thereof;
  2. Develops a site for a residence, appurtenance or any part thereof; or
  3. Sells a residence or appurtenance, any part of which the person, by himself or herself or through the person's agents, employees or subcontractors, has developed, constructed, altered, repaired, improved or landscaped.
- (Added to NRS by 1995, 2539; A 1997, 2717)

**NRS 40.623 "Design professional" defined.** "Design professional" means a person who holds a professional license or certificate issued pursuant to [chapter 623](#), [623A](#) or [625](#) of NRS.

(Added to NRS by [2003](#), [2034](#))

**NRS 40.625 "Homeowner's warranty" defined.** "Homeowner's warranty" means a warranty or policy of insurance:

1. Issued or purchased by or on behalf of a contractor for the protection of a claimant; or
2. Purchased by or on behalf of a claimant pursuant to [NRS 690B.100](#) to [690B.180](#), inclusive.

Ê The term includes a warranty contract issued by a risk retention group that operates in compliance with [chapter 695E](#) of NRS and insures all or any part of the liability of a contractor for the cost to repair a constructional defect in a residence.

(Added to NRS by 1995, 2540; A 1997, 2717; [1999](#), [1440](#))

**NRS 40.630 "Residence" defined.** "Residence" means any dwelling in which title to the individual units is transferred to the owners.

(Added to NRS by 1995, 2540; A 1997, 2717)

**NRS 40.632 "Subcontractor" defined.** "Subcontractor" means a contractor who performs work on behalf of another contractor in the construction of a residence or appurtenance.

(Added to NRS by [2003](#), [2034](#))

**NRS 40.634 "Supplier" defined.** "Supplier" means a person who provides materials, equipment or other supplies for the construction of a residence or appurtenance.

(Added to NRS by [2003](#), [2034](#))

**NRS 40.635 Applicability; effect on other defenses.** [NRS 40.600](#) to [40.695](#), inclusive:

1. Apply to any claim that arises before, on or after July 1, 1995, as the result of a constructional defect, except a claim for personal injury or wrongful death, if the claim is the subject of an action commenced on or after July 1, 1995.
  2. Prevail over any conflicting law otherwise applicable to the claim or cause of action.
  3. Do not bar or limit any defense otherwise available, except as otherwise provided in those sections.
  4. Do not create a new theory upon which liability may be based, except as otherwise provided in those sections.
- (Added to NRS by 1995, 2540; A 1997, 2717; [2003](#), [2041](#))

### Conditions and Limitations on Actions

**NRS 40.640 Liability of contractor.** In a claim to recover damages resulting from a constructional defect, a contractor is liable for the contractor's acts or omissions or the acts or omissions of the contractor's agents, employees or subcontractors and is not liable for any damages caused by:

1. The acts or omissions of a person other than the contractor or the contractor's agent, employee or subcontractor;
2. The failure of a person other than the contractor or the contractor's agent, employee or subcontractor to take reasonable action to reduce the damages or maintain the residence;
3. Normal wear, tear or deterioration;
4. Normal shrinkage, swelling, expansion or settlement; or
5. Any constructional defect disclosed to an owner before the owner's purchase of the residence, if the disclosure was provided in language that is understandable and was written in underlined and boldfaced type with capital letters.

(Added to NRS by 1995, 2540; A 1997, 2718)

**NRS 40.645 Notice of defect: Required before commencement of or addition to certain actions; content; reliance on expert opinion based on representative sample; notice regarding similarly situated owners; persons authorized to provide notice; exceptions.**

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

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

(b) May give written notice by certified mail, return receipt requested, to any subcontractor, supplier or design professional known to the claimant who may be responsible for the constructional defect, if the claimant knows that the contractor is no longer licensed in this State or that the contractor no longer acts as a contractor in this State.

2. The notice given pursuant to subsection 1 must:

- (a) Include a statement that the notice is being given to satisfy the requirements of this section;
  - (b) Specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance that is the subject of the claim; and
  - (c) Describe in reasonable detail the cause of the defects if the cause is known, the nature and extent that is known of the damage or injury resulting from the defects and the location of each defect within each residence or appurtenance to the extent known.
3. Notice that includes an expert opinion concerning the cause of the constructional defects and the nature and extent of the damage or injury resulting from the defects which is based on a valid and reliable representative sample of the components of the residences or appurtenances may be used as notice of the common constructional defects within the residences or appurtenances to which the expert opinion applies.
4. Except as otherwise provided in subsection 5, one notice may be sent relating to all similarly situated owners of residences or appurtenances within a single development that allegedly have common constructional defects if:
- (a) An expert opinion is obtained concerning the cause of the common constructional defects and the nature and extent of the damage or injury resulting from the common constructional defects;
  - (b) That expert opinion concludes that based on a valid and reliable representative sample of the components of the residences and appurtenances included in the notice, it is the opinion of the expert that those similarly situated residences and appurtenances may have such common constructional defects; and
  - (c) A copy of the expert opinion is included with the notice.
5. A representative of a homeowner's association may send notice pursuant to this section on behalf of an association that is responsible for a residence or appurtenance if the representative is acting within the scope of the representative's duties pursuant to [chapter 116](#) or [117](#) of NRS.
6. Notice is not required pursuant to this section before commencing an action if:
- (a) The contractor, subcontractor, supplier or design professional has filed an action against the claimant; or
  - (b) The claimant has filed a formal complaint with a law enforcement agency against the contractor, subcontractor, supplier or design professional for threatening to commit or committing an act of violence or a criminal offense against the claimant or the property of the claimant.
- (Added to NRS by 1995, 2540; A 1997, 2718; [1999, 1440](#); [2003, 2042](#))

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

1. Except as otherwise provided in subsection 2, not later than 60 days after a contractor receives a notice pursuant to subsection 4 of [NRS 40.645](#) which alleges common constructional defects to residences or appurtenances within a single development and which complies with the requirements of subsection 4 of [NRS 40.645](#) for giving such notice, the contractor may respond to the named owners of the residences or appurtenances in the notice in the manner set forth in [NRS 40.6472](#).
2. The contractor may provide a disclosure of the notice of the alleged common constructional defects to each unnamed owner of a residence or appurtenance within the development to whom the notice may apply in the manner set forth in this section. The disclosure must be sent by certified mail, return receipt requested, to the home address of each such owner. The disclosure must be mailed not later than 60 days after the contractor receives the notice of the alleged common constructional defects, except that if the common constructional defects may pose an imminent threat to health and safety, the disclosure must be mailed as soon as reasonably practicable, but not later than 20 days after the contractor receives the notice.
3. The disclosure of a notice of alleged common constructional defects provided by a contractor to the unnamed owners to whom the notice may apply pursuant to subsection 2 must include, without limitation:
- (a) A description of the alleged common constructional defects identified in the notice that may exist in the residence or appurtenance;
  - (b) A statement that notice alleging common constructional defects has been given to the contractor which may apply to the owner;
  - (c) A statement advising the owner that the owner has 30 days within which to request the contractor to inspect the residence or appurtenance to determine whether the residence or appurtenance has the alleged common constructional defects;
  - (d) A form which the owner may use to request such an inspection or a description of the manner in which the owner may request such an inspection;
  - (e) A statement advising the owner that if the owner fails to request an inspection pursuant to this section, no notice shall be deemed to have been given by the owner for the alleged common constructional defects; and
  - (f) A statement that if the owner chooses not to request an inspection of the owner's residence or appurtenance, the owner is not precluded from sending a notice pursuant to [NRS 40.645](#) individually or commencing an action or amending a complaint to add a cause of action for a constructional defect individually after complying with the requirements set forth in [NRS 40.600](#) to [40.695](#), inclusive.
4. If an unnamed owner requests an inspection of the owner's residence or appurtenance in accordance with subsection 3, the contractor must provide the response required pursuant to [NRS 40.6472](#) not later than 45 days after the date on which the contractor receives the request.
5. If a contractor who receives a notice pursuant to subsection 4 of [NRS 40.645](#) does not provide a disclosure to unnamed owners as authorized pursuant to this section, the owners of the residences or appurtenances to whom the notice may apply may commence an action for the constructional defect without complying with any other provision set forth in [NRS 40.600](#) to [40.695](#), inclusive. This subsection does not establish or prohibit the right to maintain a class action.

6. If a contractor fails to provide a disclosure to an unnamed owner to whom the notice of common constructional defects was intended to apply:

(a) The contractor shall be deemed to have waived the contractor's right to inspect and repair any common constructional defect that was identified in the notice with respect to that owner; and

(b) The owner is not required to comply with the provisions set forth in [NRS 40.645](#) or [40.647](#) before commencing an action or amending a complaint to add a cause of action based on that common constructional defect.

(Added to NRS by [2003, 2034](#))

**NRS 40.646 Notice of defect to be forwarded by contractor to subcontractor, supplier or design professional; effect of failure to forward notice; inspection of alleged defect; election to repair.**

1. Except as otherwise provided in subsection 2, not later than 30 days after the date on which a contractor receives notice of a constructional defect pursuant to [NRS 40.645](#), the contractor shall forward a copy of the notice by certified mail, return receipt requested, to the last known address of each subcontractor, supplier or design professional whom the contractor reasonably believes is responsible for a defect specified in the notice.

2. If a contractor does not provide notice as required pursuant to subsection 1, the contractor may not commence an action against the subcontractor, supplier or design professional related to the constructional defect unless the contractor demonstrates that, after making a good faith effort, the contractor was unable to identify the subcontractor, supplier or design professional whom the contractor believes is responsible for the defect within the time provided pursuant to subsection 1.

3. Except as otherwise provided in subsection 4, not later than 30 days after receiving notice from the contractor pursuant to this section, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 1 of [NRS 40.6462](#) and provide the contractor with a written statement indicating:

(a) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(b) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

4. If the notice of a constructional defect forwarded by the contractor was given pursuant to subsection 4 of [NRS 40.645](#) and the contractor provides a disclosure of the notice of the alleged common constructional defects to the unnamed owners to whom the notice may apply pursuant to [NRS 40.6452](#):

(a) The contractor shall, in addition to the notice provided pursuant to subsection 1, upon receipt of a request for an inspection, forward a copy of the request to or notify each subcontractor, supplier or design professional who may be responsible for the alleged defect of the request not later than 5 working days after receiving such a request; and

(b) Not later than 20 days after receiving notice from the contractor of such a request, the subcontractor, supplier or design professional shall inspect the alleged constructional defect in accordance with subsection 2 of [NRS 40.6462](#) and provide the contractor with a written statement indicating:

(1) Whether the subcontractor, supplier or design professional has elected to repair the defect for which the contractor believes the subcontractor, supplier or design professional is responsible; and

(2) If the subcontractor, supplier or design professional elects to repair the defect, an estimate of the length of time required for the repair, and at least two proposed dates on and times at which the subcontractor, supplier or design professional is able to begin making the repair.

5. If a subcontractor, supplier or design professional elects to repair the constructional defect, the contractor or claimant may hold the subcontractor liable for any repair which does not eliminate the defect.

(Added to NRS by [2003, 2035](#))

**NRS 40.6462 Access to residence or appurtenance with alleged defect after notice of defect is given; effect on owners who did not provide notice.**

1. Except as otherwise provided in subsection 2, after notice of a constructional defect is given to a contractor pursuant to [NRS 40.645](#), the claimant shall, upon reasonable notice, allow the contractor and each subcontractor, supplier or design professional who may be responsible for the alleged defect reasonable access to the residence or appurtenance that is the subject of the notice to determine the nature and extent of a constructional defect and the nature and extent of repairs that may be necessary. To the extent possible, the persons entitled to inspect shall coordinate and conduct the inspections in a manner which minimizes the inconvenience to the claimant.

2. If notice is given to the contractor pursuant to subsection 4 of [NRS 40.645](#), the contractor and each subcontractor, supplier or design professional who may be responsible for the defect do not have the right to inspect the residence or appurtenance of an owner who is not named in the notice unless the owner requests the inspection in the manner set forth in [NRS 40.6452](#). If the owner does not request the inspection, the owner shall be deemed not to have provided notice pursuant to [NRS 40.645](#).

(Added to NRS by [2003, 2036](#))

**NRS 40.647 Claimant required to allow inspection of and reasonable opportunity to repair defect; effect of noncompliance.**

1. Except as otherwise provided in [NRS 40.6452](#), after notice of a constructional defect is given pursuant to [NRS 40.645](#), before a claimant may commence an action or amend a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the claimant must:

(a) Allow an inspection of the alleged constructional defect to be conducted pursuant to [NRS 40.6462](#); and

(b) 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](#).

2. If a claimant commences an action without complying with subsection 1 or [NRS 40.645](#), the court shall:

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

(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.

(Added to NRS by [2003, 2039](#))

**NRS 40.6472 Response to notice of defect: Time for sending; content; effect of election to repair or not to repair.**

1. Except as otherwise provided in [NRS 40.670](#) and [40.672](#) and [NRS 40.6452](#), a written response must be sent by certified mail, return receipt requested, to a claimant who gives notice of a constructional defect pursuant to [NRS 40.645](#):

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

(b) If notice was sent to a subcontractor, supplier or design professional, by the subcontractor, supplier or design professional not later than 90 days after the date that the subcontractor, supplier or design professional receives the notice.

2. The written response sent pursuant to subsection 1 must respond to each constructional defect in the notice and:

(a) Must state whether the contractor, subcontractor, supplier or design professional has elected to repair the defect or cause the defect to be repaired. If an election to repair is included in the response and the repair will cause the claimant to move from the claimant's home during the repair, the election must also include monetary compensation in an amount reasonably necessary for temporary housing or for storage of household items, or for both, if necessary.

(b) May include a proposal for monetary compensation, which may include contribution from a subcontractor, supplier or design professional.

(c) May disclaim liability for the constructional defect and state the reasons for such a disclaimer.

3. If the claimant is a homeowners' association, the association shall send a copy of the response to each member of the association not later than 30 days after receiving the response.

4. If the contractor, subcontractor, supplier or design professional has elected not to repair the constructional defect, the claimant or contractor may bring a cause of action for the constructional defect or amend a complaint to add a cause of action for the constructional defect.

5. If the contractor, subcontractor, supplier or design professional has elected to repair the constructional defect, the claimant must provide the contractor, subcontractor, supplier or design professional with a reasonable opportunity to repair the constructional defect.

(Added to NRS by [2003, 2037](#))

**NRS 40.648 Election to repair defect: Who may repair; manner for performing repairs; deadline for repair; extension of deadline; written statement of repairs performed.**

1. If the response provided pursuant to [NRS 40.6472](#) includes an election to repair the constructional defect:

(a) The repairs may be performed by the contractor, subcontractor, supplier or design professional, if such person is properly licensed, bonded and insured to perform the repairs and, if such person is not, the repairs may be performed by another person who meets those qualifications.

(b) The repairs must be performed:

(1) On reasonable dates and at reasonable times agreed to in advance with the claimant;

(2) In compliance with any applicable building code and in a good and workmanlike manner in accordance with the generally accepted standard of care in the industry for that type of repair; and

(3) In a manner which will not increase the cost of maintaining the residence or appurtenance than otherwise would have been required if the residence or appurtenance had been constructed without the constructional defect, unless the contractor and the claimant agree in writing that the contractor will compensate the claimant for the increased cost incurred as a result of the repair.

(c) Any part of the residence or appurtenance that is not defective but which must be removed to correct the constructional defect must be replaced.

(d) The contractor, subcontractor, supplier or design professional shall prevent, remove and indemnify the claimant against any mechanics' liens and materialmen's liens.

2. Unless the claimant and the contractor, subcontractor, supplier or design professional agree to extend the time for repairs, the repairs must be completed:

(a) If the notice was sent pursuant to subsection 4 of [NRS 40.645](#) and there are four or fewer owners named in the notice, for the named owners, not later than 105 days after the date on which the contractor received the notice.

(b) If the notice was sent pursuant to subsection 4 of [NRS 40.645](#) and there are five or more owners named in the notice, for the named owners, not later than 150 days after the date on which the contractor received the notice.

(c) If the notice was sent pursuant to subsection 4 of [NRS 40.645](#), not later than 105 days after the date on which the contractor provides a disclosure of the notice to the unnamed owners to whom the notice applies pursuant to [NRS 40.6452](#).

(d) If the notice was not sent pursuant to subsection 4 of [NRS 40.645](#):

(1) Not later than 105 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice of a constructional defect was received from four or fewer owners; or

(2) Not later than 150 days after the date on which the notice of the constructional defect was received by the contractor, subcontractor, supplier or design professional if the notice was received from five or more owners or from a representative of a homeowners' association.

3. If repairs reasonably cannot be completed within the time set forth in subsection 2, the claimant and the contractor, subcontractor, supplier or design professional shall agree to a reasonable time within which to complete the repair. If the claimant and contractor, subcontractor, supplier or design professional cannot agree on such a time, any of them may petition the court to establish a reasonable time for completing the repair.

4. Any election to repair made pursuant to [NRS 40.6472](#) may not be made conditional upon a release of liability.

5. Not later than 30 days after the repairs are completed, the contractor, subcontractor, supplier or design professional who repaired or caused the repair of a constructional defect shall provide the claimant with a written statement describing the nature and extent of the repair, the method used to repair the constructional defect and the extent of any materials or parts that were replaced during the repair.

(Added to NRS by [2003, 2037](#))

**NRS 40.649 Notice of defect may be presented to insurer; duties of insurer.**

1. If a contractor, subcontractor, supplier or design professional receives written notice of a constructional defect, the contractor, subcontractor, supplier or design professional may present the claim to an insurer which has issued a policy of insurance that covers all or any portion of the business of the contractor, subcontractor, supplier or design professional.

2. If the contractor, subcontractor, supplier or design professional presents the claim to the insurer pursuant to this section, the insurer:

(a) Must treat the claim as if a civil action has been brought against the contractor, subcontractor, supplier or design professional; and

(b) Must provide coverage to the extent available under the policy of insurance as if a civil action has been brought against the contractor, subcontractor, supplier or design professional.

3. A contractor, subcontractor, supplier or design professional is not required to present a claim to the insurer pursuant to this section, and the failure to present such a claim to the insurer does not relieve the insurer of any duty under the policy of insurance to the contractor, subcontractor, supplier or design professional.

(Added to NRS by [2003, 2040](#))

**NRS 40.650 Effect of rejecting reasonable offer of settlement; effect of failing to take certain actions concerning defect; effect of coverage available under homeowner's warranty.**

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:

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

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

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

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

(a) Comply with the provisions of [NRS 40.6472](#);

(b) Make an offer of settlement;

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

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

(e) Participate in mediation,

È 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 for a constructional defect without satisfying any other requirement of [NRS 40.600](#) to [40.695](#), inclusive.

3. If a residence or appurtenance that is the subject of the claim is covered by a homeowner's warranty that is purchased by or on behalf of a claimant pursuant to [NRS 690B.100](#) to [690B.180](#), inclusive, a claimant shall diligently pursue a claim under the contract. If coverage under a homeowner's warranty is denied by an insurer in bad faith, the homeowner and the contractor, subcontractor, supplier or design professional have a right of action for the sums that would have been paid if coverage had been provided, plus reasonable attorney's fees and costs.

4. Nothing in this section prohibits an offer of judgment pursuant to [Rule 68](#) of the Nevada Rules of Civil Procedure or [NRS 17.115](#) if the offer of judgment includes all damages to which the claimant is entitled pursuant to [NRS 40.655](#).

(Added to NRS by 1995, 2541; A 1997, 2719; [1999, 1442](#); [2003, 2044](#))

**NRS 40.655 Limitation on recovery.**

1. Except as otherwise provided in [NRS 40.650](#), in a claim governed by [NRS 40.600](#) to [40.695](#), inclusive, the claimant may recover only the following damages to the extent proximately caused by a constructional defect:

(a) Any reasonable attorney's fees;

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

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

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

- (e) The reasonable value of any other property damaged by the constructional defect;
  - (f) Any additional costs reasonably incurred by the claimant, including, but not limited to, any costs and fees incurred for the retention of experts to:
    - (1) Ascertain the nature and extent of the constructional defects;
    - (2) Evaluate appropriate corrective measures to estimate the value of loss of use; and
    - (3) Estimate the value of loss of use, the cost of temporary housing and the reduction of market value of the residence; and
  - (g) Any interest provided by statute.
2. The amount of any attorney's fees awarded pursuant to this section must be approved by the court.
  3. If a contractor complies with the provisions of [NRS 40.600](#) to [40.695](#), inclusive, the claimant may not recover from the contractor, as a result of the constructional defect, anything other than that which is provided pursuant to [NRS 40.600](#) to [40.695](#), inclusive.
  4. This section must not be construed as impairing any contractual rights between a contractor and a subcontractor, supplier or design professional.
  5. As used in this section, "structural failure" means physical damage to the load-bearing portion of a residence or appurtenance caused by a failure of the load-bearing portion of the residence or appurtenance.
- (Added to NRS by 1995, 2541; A 1997, 2720; [2003, 2045](#))

**NRS 40.660 Nonacceptance of offer of settlement deemed rejection.** An offer of settlement made pursuant to paragraph (b) of subsection 2 of [NRS 40.6472](#) that is not accepted within 35 days after the offer is received by the claimant is considered rejected if the offer contains a clear and understandable statement notifying the claimant of the consequences of the claimant's failure to respond or otherwise accept or reject the offer of settlement. An affidavit certifying rejection of an offer of settlement under this section may be filed with the court.

(Added to NRS by 1995, 2542; A [1999, 1442](#); [2003, 2045](#))

**NRS 40.665 Settlement by repurchase; certain offers of settlement deemed reasonable.** In addition to any other method provided for settling a claim pursuant to [NRS 40.600](#) to [40.695](#), inclusive, a contractor may, pursuant to a written agreement entered into with a claimant, settle a claim by repurchasing the claimant's residence and the real property upon which it is located. The agreement may include provisions which reimburse the claimant for:

1. The market value of the residence as if no constructional defect existed, except that if a residence is less than 2 years of age and was purchased from the contractor against whom the claim is brought, the market value is the price at which the residence was sold to the claimant;
  2. The value of any improvements made to the property by a person other than the contractor;
  3. Reasonable attorney's fees and fees for experts; and
  4. Any costs, including costs and expenses for moving and costs, points and fees for loans.
- Any offer of settlement made that includes the items listed in this section shall be deemed reasonable for the purposes of subsection 1 of [NRS 40.650](#).

(Added to NRS by 1995, 2542; A 1997, 2721; [2003, 2046](#))

**NRS 40.667 Effect of written waiver or settlement agreement when contractor fails to correct or repair defect properly; conditions to bringing action; effect of failure to prevail in action.**

1. Except as otherwise provided in subsection 2, a written waiver or settlement agreement executed by a claimant after a contractor has corrected or otherwise repaired a constructional defect does not bar a claim for the constructional defect if it is determined that the contractor failed to correct or repair the defect properly.
  2. The provisions of subsection 1 do not apply to any written waiver or settlement agreement described in subsection 1, unless:
    - (a) The claimant has obtained the opinion of an expert concerning the constructional defect;
    - (b) The claimant has provided the contractor with a written notice of the defect pursuant to [NRS 40.645](#) and a copy of the expert's opinion; and
    - (c) The claimant and the contractor have complied with the requirements for inspection and repair as provided in [NRS 40.600](#) to [40.695](#), inclusive.
  3. The provisions of this section do not apply to repairs which are made pursuant to an election to repair pursuant to [NRS 40.6472](#).
  4. If a claimant does not prevail in any action which is not barred pursuant to this section, the court may:
    - (a) Deny the claimant's attorney's fees, fees for an expert witness or costs; and
    - (b) Award attorney's fees and costs to the contractor.
- (Added to NRS by 1995, 2544; A 1997, 2723; [1999, 1442](#); [2003, 2046](#))

**NRS 40.668 Action against subdivider or master developer for defect in appurtenance in planned unit development: Conditions and limitations; tolling of statutes of limitation or repose; applicability.**

1. Notwithstanding the provisions of [NRS 40.600](#) to [40.695](#), inclusive, a claimant may not commence an action against a subdivider or master developer for a constructional defect in an appurtenance constructed on behalf of the subdivider or master developer in a planned unit development, to the extent that the appurtenance was constructed by or through a licensed general contractor, unless:
  - (a) The subdivider or master developer fails to provide to the claimant the name, address and telephone number of each contractor hired by the subdivider or master developer to construct the appurtenance within 30 days of the receipt by

the subdivider or master developer of a request from the claimant for such information; or

(b) After the claimant has made a good faith effort to obtain full recovery from the contractors hired by the subdivider or master developer to construct the appurtenance, the claimant has not obtained a full recovery.

2. All statutes of limitation or repose applicable to a claim governed by this section are tolled from the time the claimant notifies a contractor hired by the subdivider or master developer of the claim until the earlier of the date:

(a) A court determines that the claimant cannot obtain a full recovery against those contractors; or

(b) The claimant receives notice that those contractors are bankrupt, insolvent or dissolved.

Ê Tolling pursuant to this subsection applies only to the subdivider or master developer. Notwithstanding any applicable statute of limitation or repose, the claimant may commence an action against the subdivider or master developer for the claim within 1 year after the end of the tolling described in this subsection.

3. Nothing in this section prohibits the commencement of an action against a subdivider or master developer for a constructional defect in a residence sold, designed or constructed by or on behalf of the subdivider or master developer.

4. Nothing in this section prohibits a person other than the claimant from commencing an action against a subdivider or master developer to enforce the person's own rights.

5. The provisions of this section do not apply to a subdivider or master developer who acts as a general contractor or uses the subdivider's or master developer's license as a general contractor in the course of constructing the appurtenance that is the subject of the action.

6. As used in this section:

(a) "Master developer" means a person who buys, sells or develops a planned unit development, including, without limitation, a person who enters into a development agreement pursuant to [NRS 278.0201](#).

(b) "Planned unit development" has the meaning ascribed to it in [NRS 278A.065](#).

(c) "Subdivider" has the meaning ascribed to it in [NRS 278.0185](#).

(Added to NRS by [1999, 1438](#))

### Repairs

#### **NRS 40.670 Defect which creates imminent threat to health or safety: Duty to cure; effect of failure to cure; exceptions.**

1. A contractor, subcontractor, supplier or design professional who receives written notice of a constructional defect resulting from work performed by the contractor, subcontractor, supplier or design professional which creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. The contractor, subcontractor, supplier or design professional shall not cure the defect by making any repairs for which such person is not licensed or by causing any repairs to be made by a person who is not licensed to make those repairs. If the contractor, subcontractor, supplier or design professional fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor, subcontractor, supplier or design professional the reasonable cost of the repairs plus reasonable attorney's fees and costs in addition to any other damages recoverable under any other law.

2. A contractor, subcontractor, supplier or design professional who does not cure a defect pursuant to this section because such person has determined, in good faith and after a reasonable inspection, that there is not an imminent threat to the health or safety of the inhabitants is not liable for attorney's fees and costs pursuant to this section, except that if a building inspector, building official or other similar authority employed by a governmental body with jurisdiction certifies that there is an imminent threat to the health and safety of the inhabitants of the residence, the contractor, subcontractor, supplier or design professional is subject to the provisions of subsection 1.

(Added to NRS by 1995, 2542; A 1997, 2721; [2001, 1249](#); [2003, 2046](#))

**NRS 40.672 Defect in new residence: Duty to repair; deadline for repair; extensions; disciplinary action for failure to comply.** Except as otherwise provided in [NRS 40.670](#), if a contractor, subcontractor, supplier or design professional receives written notice of a constructional defect not more than 1 year after the close of escrow of the initial purchase of the residence, the contractor, subcontractor, supplier or design professional shall make the repairs within 45 days after receiving the written notice unless completion is delayed by the claimant or by other events beyond the control of the contractor, subcontractor, supplier or design professional, or timely completion of repairs is not reasonably possible. The contractor, subcontractor, supplier or design professional and claimant may agree in writing to extend the period prescribed by this section. If a contractor or subcontractor fails to comply with this section, the contractor or subcontractor is immediately subject to discipline pursuant to [NRS 624.300](#).

(Added to NRS by [1999, 1437](#); A [2003, 2047](#))

#### **NRS 40.675 Inspection of repairs.**

1. A contractor who makes or provides for repairs under [NRS 40.600](#) to [40.695](#), inclusive, may take reasonable steps to prove that the repairs were made and to have them inspected.

2. The provisions of [NRS 40.600](#) to [40.695](#), inclusive, regarding inspection and repair are in addition to any rights of inspection and settlement provided by common law or by another statute.

(Added to NRS by 1995, 2542)

### Special Procedures

#### **NRS 40.680 Mediation of certain claims required before action commenced or complaint amended; procedure;**

**appointment of special master; effect of failure to mediate in good faith.**

1. Except as otherwise provided in this chapter, before a claimant commences an action or amends a complaint to add a cause of action for a constructional defect against a contractor, subcontractor, supplier or design professional, the matter must be submitted to mediation, unless mediation is waived in writing by the contractor, subcontractor, supplier or design professional and the claimant.

2. The claimant and each party alleged to have caused the constructional defect must select a mediator by agreement. If the claimant and the other parties fail to agree upon a mediator within 20 days after a mediator is first selected by the claimant, any party may petition the American Arbitration Association, the Nevada Arbitration Association, Nevada Dispute Resolution Services or any other mediation service acceptable to the parties for the appointment of a mediator. A mediator so appointed may discover only those documents or records which are necessary to conduct the mediation. The mediator shall convene the mediation within 30 days after the matter is submitted to the mediator and shall complete the mediation within 45 days after the matter is submitted to the mediator, unless the parties agree to extend the time.

3. Before the mediation begins:

(a) The claimant shall deposit \$50 with the mediation service; and

(b) Each other party shall deposit with the mediation service, in equal shares, the remaining amount estimated by the mediation service as necessary to pay the fees and expenses of the mediator for the first session of mediation and shall deposit additional amounts demanded by the mediation service as incurred for that purpose.

4. Unless otherwise agreed, the total fees for each day of mediation and the mediator must not exceed \$750 per day.

5. If the parties do not reach an agreement concerning the matter during mediation or if any party who is alleged to have caused the constructional defect fails to pay the required fees and appear, the claimant may commence an action or amend a complaint to add a cause of action for the constructional defect in court and:

(a) The reasonable costs and fees of the mediation are recoverable by the prevailing party as costs of the action.

(b) Any party may petition the court in which the action is commenced for the appointment of a special master.

6. A special master appointed pursuant to subsection 5 may:

(a) Review all pleadings, papers or documents filed with the court concerning the action.

(b) Coordinate the discovery of any books, records, papers or other documents by the parties, including the disclosure of witnesses and the taking of the deposition of any party.

(c) Order any inspections on the site of the property by a party and any consultants or experts of a party.

(d) Order settlement conferences and attendance at those conferences by any representative of the insurer of a party.

(e) Require any attorney representing a party to provide statements of legal and factual issues concerning the action.

(f) Refer to the judge who appointed the special master or to the presiding judge of the court in which the action is commenced any matter requiring assistance from the court.

È The special master shall not, unless otherwise agreed by the parties, personally conduct any settlement conferences or engage in any ex parte meetings regarding the action.

7. Upon application by a party to the court in which the action is commenced, any decision or other action taken by a special master appointed pursuant to this section may be appealed to the court for a decision.

8. A report issued by a mediator or special master that indicates that a party has failed to appear before the mediator or special master or to mediate in good faith is admissible in the action, but a statement or admission made by a party in the course of mediation is not admissible.

(Added to NRS by 1995, 2543; A 1997, 2721; [2003, 2047](#))

**NRS 40.681 Premediation discovery.** Not later than 15 days before the commencement of mediation required pursuant to [NRS 40.680](#) and upon providing 15 days' notice, each party shall provide to the other party, or shall make a reasonable effort to assist the other party to obtain, all relevant reports, photos, correspondence, plans, specifications, warranties, contracts, subcontracts, work orders for repair, videotapes, technical reports, soil and other engineering reports and other documents or materials relating to the claim that are not privileged.

(Added to NRS by [2003, 2041](#))

**NRS 40.684 Duties of insurer with respect to settlement conference.**

1. If a settlement conference is held concerning a claim for a constructional defect, the special master, if any, or the judge presiding over the claim may order a representative of an insurer of a party to attend the settlement conference. If a representative of an insurer is ordered to attend the settlement conference, the insurer shall ensure that the representative is authorized, on behalf of the insurer, to:

(a) Bind the insurer to any settlement agreement relating to the claim;

(b) Enter into any agreement relating to coverage that may be available under the party's policy of insurance which is required to carry out any settlement relating to the claim; and

(c) Commit for expenditure money or other assets available under the party's policy of insurance.

2. If a representative of an insurer who is ordered to attend a settlement conference pursuant to subsection 1 fails to attend the settlement conference or attends but is substantially unprepared to participate, or fails to participate in good faith, the special master or the judge may, on the special master's or the judge's own motion or that of a party, issue any order with regard thereto that is just under the circumstances.

3. In lieu of or in addition to any other sanction, the special master or the judge may require the insurer to pay any reasonable expenses or attorney's fees incurred by a party because of the failure of the insurer or its representative to comply with the provisions of this section or any order issued pursuant to this section, unless the special master or the judge finds that the failure to comply was substantially justified or that any other circumstances make the award of such expenses or fees unjust.

4. Any insurer which conducts business in this State and which insures a party against liability for the claim shall be deemed to have consented to the jurisdiction of the special master or the judge for the purposes of this section.

5. The authority conferred upon the special master or the judge pursuant to this section is in addition to any other authority conferred upon the special master or the judge pursuant to any other statute or any court rule.

(Added to NRS by [2003, 2040](#))

### Disclosures

**NRS 40.687 Disclosure of information concerning warranties after action is commenced; disclosure of information concerning insurance agreements; compelled production of information.** Notwithstanding any other provision of law:

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

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

3. Except as otherwise provided in subsection 4, if either party fails to provide the information required pursuant to subsection 1 or 2 within the time allowed, the other party may petition the court to compel production of the information. Upon receiving such a petition, the court may order the party to produce the required information and may award the petitioning party reasonable attorney's fees and costs incurred in petitioning the court pursuant to this subsection.

4. The parties may agree to an extension of time to produce the information required pursuant to this section.

5. For the purposes of this section, "information about insurance agreements" is limited to any declaration sheets, endorsements and contracts of insurance issued to the contractor from the commencement of construction of the residence of the claimant to the date on which the request for the information is made and does not include information concerning any disputes between the contractor and an insurer or information concerning any reservation of rights by an insurer.

(Added to NRS by 1997, 2716; A [1999, 1443](#))

**NRS 40.688 Disclosure of defects by claimant to prospective purchaser of residence required; timing and contents of disclosure; duty of attorney to inform claimant of disclosure requirement.**

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

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

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

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

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

2. Before taking any action on a claim pursuant to [NRS 40.600 to 40.695](#), inclusive, the attorney for a claimant shall notify the claimant in writing of the provisions of this section.

(Added to NRS by [1999, 1439](#); A [2003, 2048](#))

### Additional Requirement for Actions Against Design Professionals

**NRS 40.6882 "Complainant" defined.** As used in [NRS 40.6884](#) and [40.6885](#), unless the context otherwise requires, "complainant" means a person who makes a claim or files an action against a design professional pursuant to [NRS 40.600 to 40.695](#), inclusive.

(Added to NRS by [2001 Special Session, 66](#); A [2003, 2049](#))

**NRS 40.6884 Attorney required to consult expert; required affidavit of attorney; required report of expert.**

1. Except as otherwise provided in subsection 2, in an action governed by [NRS 40.600 to 40.695](#), inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, the attorney for the complainant shall file an affidavit with the court concurrently with the service of the first pleading in the action stating that the attorney:

(a) Has reviewed the facts of the case;

(b) Has consulted with an expert;

(c) Reasonably believes the expert who was consulted is knowledgeable in the relevant discipline involved in the action; and

(d) Has concluded on the basis of the attorney's review and the consultation with the expert that the action has a reasonable basis in law and fact.

2. The attorney for the complainant may file the affidavit required pursuant to subsection 1 at a later time if the attorney could not consult with an expert and prepare the affidavit before filing the action without causing the action to be

impaired or barred by the statute of limitations or repose, or other limitations prescribed by law. If the attorney must submit the affidavit late, the attorney shall file an affidavit concurrently with the service of the first pleading in the action stating the attorney's reason for failing to comply with subsection 1 and the attorney shall consult with an expert and file the affidavit required pursuant to subsection 1 not later than 45 days after filing the action.

3. In addition to the statement included in the affidavit pursuant to subsection 1, a report must be attached to the affidavit. Except as otherwise provided in subsection 4, the report must be prepared by the expert consulted by the attorney and include, without limitation:

- (a) The resume of the expert;
- (b) A statement that the expert is experienced in each discipline which is the subject of the report;
- (c) A copy of each nonprivileged document reviewed by the expert in preparing the expert's report, including, without limitation, each record, report and related document that the expert has determined is relevant to the allegations of negligent conduct that are the basis for the action;
- (d) The conclusions of the expert and the basis for the conclusions; and
- (e) A statement that the expert has concluded that there is a reasonable basis for filing the action.

4. In an action brought by a claimant in which an affidavit is required to be filed pursuant to subsection 1:

(a) The report required pursuant to subsection 3 is not required to include the information set forth in paragraphs (c) and (d) of subsection 3 if the claimant or the claimant's attorney files an affidavit, at the time that the affidavit is filed pursuant to subsection 1, stating that the claimant or the claimant's attorney made reasonable efforts to obtain the nonprivileged documents described in paragraph (c) of subsection 3, but was unable to obtain such documents before filing the action;

(b) The claimant or the claimant's attorney shall amend the report required pursuant to subsection 3 to include any documents and information required pursuant to paragraph (c) or (d) of subsection 3 as soon as reasonably practicable after receiving the document or information; and

(c) The court may dismiss the action if the claimant and the claimant's attorney fail to comply with the requirements of paragraph (b).

5. An expert consulted by an attorney to prepare an affidavit pursuant to this section must not be a party to the action.

6. As used in this section, "expert" means a person who is licensed in a state to engage in the practice of professional engineering, land surveying, architecture or landscape architecture.

(Added to NRS by [2001 Special Session, 66](#))

**NRS 40.6885 Effect of compliance with or failure to comply with [NRS 40.6884](#).**

1. The court shall dismiss an action governed by [NRS 40.600](#) to [40.695](#), inclusive, that is commenced against a design professional or a person primarily engaged in the practice of professional engineering, land surveying, architecture or landscape architecture, including, without limitation, an action for professional negligence, if the attorney for the complainant fails to:

- (a) File an affidavit required pursuant to [NRS 40.6884](#);
- (b) File a report required pursuant to subsection 3 of [NRS 40.6884](#); or
- (c) Name the expert consulted in the affidavit required pursuant to subsection 1 of [NRS 40.6884](#).

2. The fact that an attorney for a complainant has complied or failed to comply with the provisions of [NRS 40.6884](#) is admissible in the action.

(Added to NRS by [2001 Special Session, 67](#))

### Miscellaneous Provisions

**NRS 40.6887 Submission of questions or disputes concerning defects to State Contractors' Board; regulations.**

1. A claimant or any contractor, subcontractor, supplier or design professional may submit a question or dispute to the State Contractors' Board concerning any matter which may affect or relate to a constructional defect, including, without limitation, questions concerning the need for repairs, the appropriate method for repairs, the sufficiency of any repairs that have been made and the respective rights and responsibilities of homeowners, claimants, contractors, subcontractors, suppliers and design professionals.

2. If a question or dispute is submitted to the State Contractors' Board pursuant to this section, the State Contractors' Board shall, pursuant to its regulations, rules and procedures, respond to the question or investigate the dispute and render a decision. Nothing in this section authorizes the State Contractors' Board to require the owner of a residence or apartment to participate in any administrative hearing which is held pursuant to this section.

3. Not later than 30 days after a question or dispute is submitted to the State Contractors' Board pursuant to subsection 1, the State Contractors' Board shall respond to the question or render its decision. The response or decision of the State Contractors' Board:

(a) Is not binding and is not subject to judicial review pursuant to the provisions of [chapters 233B](#) and [624](#) of NRS; and

(b) Is not admissible in any judicial or administrative proceeding brought pursuant to the provisions of this chapter.

4. The provisions of this chapter do not preclude a claimant or a contractor, subcontractor, supplier or design professional from pursuing any remedy otherwise available from the State Contractors' Board pursuant to the provisions of [chapter 624](#) of NRS concerning a constructional defect.

5. If an action for a constructional defect has been commenced, the court shall not stay or delay any proceedings before the court pending an answer to a question or decision concerning a dispute submitted to the State Contractors' Board.

6. The State Contractors' Board shall adopt regulations necessary to carry out the provisions of this section and may charge and collect reasonable fees from licensees to cover the cost of carrying out its duties pursuant to this section.

(Added to NRS by [2003, 2039](#); A [2005, 477](#))

**NRS 40.689 Preference given to action; action may be assigned to senior judge; assessment of additional expenses.**

1. Upon petition by a party:

(a) The court shall give preference in setting a date for the trial of an action commenced pursuant to [NRS 40.600](#) to [40.695](#), inclusive; and

(b) The court may assign an action commenced pursuant to [NRS 40.600](#) to [40.695](#), inclusive, to a senior judge.

2. If the action is assigned to a senior judge upon petition by a party:

(a) Any additional expenses caused by the assignment must be borne equally by each party involved; or

(b) The judge may distribute any additional expenses among the parties as the judge deems appropriate.

(Added to NRS by 1997, 2716)

**NRS 40.690 Limitation on bringing claim against governmental entity during period for resolution; effect of settlement; contractor or claimant may require party to appear and participate.**

1. A claim governed by [NRS 40.600](#) to [40.695](#), inclusive, may not be brought by a claimant or contractor against a government, governmental agency or political subdivision of a government, during the period in which a claim for a constructional defect is being settled, mediated or otherwise resolved pursuant to [NRS 40.600](#) to [40.695](#), inclusive. The settlement of such a claim does not affect the rights or obligations of the claimant or contractor in any action brought by the claimant or contractor against a third party.

2. A contractor or claimant may require a party against whom the contractor or claimant asserts a claim governed by [NRS 40.600](#) to [40.695](#), inclusive, to appear and participate in proceedings held pursuant to those sections as if the party were a contractor and the party requiring the appearance were a claimant. The party must receive notice of the proceedings from the contractor or claimant.

(Added to NRS by 1995, 2544; A 1997, 2723; [1999, 1443](#))

**NRS 40.692 Notice not required to be given to intervener in action.** A claimant who commences an action for a constructional defect is not required to give written notice of a defect pursuant to [NRS 40.645](#) to any person who intervenes in the action as a party after it is commenced. If such a person becomes a party to the action:

1. For the purposes of [NRS 40.645](#), the person shall be deemed to have been given notice of the defect by the claimant on the date on which the person becomes a party to the action; and

2. The provisions of [NRS 40.600](#) to [40.695](#), inclusive, apply to the person after that date.

(Added to NRS by [1999, 1438](#); A [2003, 2049](#))

**NRS 40.695 Tolling of statutes of limitation or repose; applicability.**

1. Except as otherwise provided in subsection 2, statutes of limitation or repose applicable to a claim based on a constructional defect governed by [NRS 40.600](#) to [40.695](#), inclusive, are tolled from the time notice of the claim is given, until 30 days after mediation is concluded or waived in writing pursuant to [NRS 40.680](#).

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

(Added to NRS by 1995, 2544; A 1997, 2723; [1999, 1444](#); [2003, 2049](#))

## MISCELLANEOUS PROVISIONS

**NRS 40.750 Fraud against financial institution or other lender for purpose of obtaining loan secured by lien on real property.**

1. As used in this section, "financial institution" means a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, or any subsidiary or affiliate of a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, which is authorized to transact business in this State and which makes or acquires, in whole or in part, any loan of the kind described in subsection 2.

2. Except as otherwise provided in subsection 5, a person who, for the purpose of obtaining a loan secured by a lien on real property, knowingly conceals a material fact, or makes a false statement concerning a material fact knowing that the statement is false, is liable to any financial institution or other lender which relied upon the absence of that concealed fact or on that false statement for any damages it sustains because of the fraud.

3. In addition to its actual damages, a financial institution or other lender may recover exemplary or punitive damages in an amount not to exceed 50 percent of the actual damages awarded.

4. The cause of action provided by this section:

(a) Is not, for the purposes of [NRS 40.430](#), an action for the recovery of any debt or an action for the enforcement of any right secured by mortgage or lien upon real estate.

(b) Is in addition to and not in substitution for any right of foreclosure existing in favor of the financial institution or other lender. Any recovery pursuant to this section does not limit the amount of a judgment awarded pursuant to [NRS 40.459](#), but the financial institution or other lender is not entitled to recover actual damages more than once for the same loss.

5. The provisions of this section do not apply to any loan which is secured by a lien on real property used for

residential purposes if:

- (a) The residence is a single-family dwelling occupied by the person obtaining the loan, as represented by the person in connection with the person's application for the loan; and
  - (b) The loan is for the principal amount of \$150,000 or less.
- (Added to NRS by 1987, 1346; A [1999, 3802](#); [2003, 3570](#); [2007, 2850](#))

**NRS 40.760 Summary eviction of person using facility for storage as residence.**

1. When a person is using a facility for storage as a residence, the owner or the owner's agent shall serve or have served a notice in writing which directs the person to cease using the facility as a residence no later than 24 hours after receiving the notice. The notice must advise the person that:

- (a) [NRS 108.475](#) requires the owner to ask the court to have the person evicted if the person has not ceased using the facility as a residence within 24 hours; and
- (b) The person may continue to use the facility to store the person's personal property in accordance with the rental agreement.

2. If the person does not cease using the facility as a residence within 24 hours after receiving the notice to do so, the owner of the facility or the owner's agent shall apply by affidavit for summary eviction to the justice of the peace of the township wherein the facility is located. The affidavit must contain:

- (a) The date the rental agreement became effective.
- (b) A statement that the person is using the facility as a residence.
- (c) The date and time the person was served with written notice to cease using the facility as a residence.
- (d) A statement that the person has not ceased using the facility as a residence within 24 hours after receiving the notice.

3. Upon receipt of such an affidavit the justice of the peace shall issue an order directing the sheriff or constable of the county to remove the person within 24 hours after receipt of the order. The sheriff or constable shall not remove the person's personal property from the facility.

4. For the purposes of this section, "facility for storage" means real property divided into individual spaces which are rented or leased for storing personal property. The term does not include a garage or storage area in a private residence.

(Added to NRS by 1989, 213)—(Substituted in revision for NRS 40.555)

**NRS 40.770 Limitation on liability of seller, seller's agent and buyer's agent for failure to disclose certain facts concerning property.**

1. Except as otherwise provided in subsection 6, in any sale, lease or rental of real property, the fact that the property is or has been:

- (a) The site of a homicide, suicide or death by any other cause, except a death that results from a condition of the property;
- (b) The site of any crime punishable as a felony other than a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine; or
- (c) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property, is not material to the transaction.

2. In any sale, lease or rental of real property, the fact that a sex offender, as defined in [NRS 179D.095](#), resides or is expected to reside in the community is not material to the transaction, and the seller, lessor or landlord or any agent of the seller, lessor or landlord does not have a duty to disclose such a fact to a buyer, lessee or tenant or any agent of a buyer, lessee or tenant.

3. In any sale, lease or rental of real property, the fact that a facility for transitional living for released offenders that is licensed pursuant to [chapter 449](#) of NRS is located near the property being sold, leased or rented is not material to the transaction.

4. A seller, lessor or landlord or any agent of the seller, lessor or landlord is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the seller, lessor or landlord or agent of the seller, lessor or landlord had no actual knowledge.

5. Except as otherwise provided in an agreement between a buyer, lessee or tenant and that person's agent, an agent of the buyer, lessee or tenant is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the agent of the buyer, lessee or tenant had no actual knowledge.

6. For purposes of this section, the fact that the property is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine is not material to the transaction if:

- (a) All materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or
- (b) The property has been deemed safe for habitation by the board of health.

7. As used in this section:

- (a) "Board of health" has the meaning ascribed to it in [NRS 439.4797](#).
  - (b) "Facility for transitional living for released offenders" has the meaning ascribed to it in [NRS 449.0055](#).
- (Added to NRS by 1989, 629; A 1995, 845; 1997, 1674; [2003, 1338](#); [2005, 2353](#); [2007, 2772](#); [2009, 826](#))