



Date: April 11, 2017
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Study Demonstrates Benefits of Chapter 40 Reforms for Homeowners and Contractors

CARSON CITY, NV April 11 –A study released by the Nevada Home Builders Association today provides the first conclusive evidence that the reforms to Nevada’s Chapter 40 construction defect statute enacted at the 2015 Legislature are working as intended with benefits for homeowners, consumers and contractors.

Key findings of the study include:

- Time for homeowners to resolve a Chapter 40 dispute has decreased by more than 60 percent;
- Cost to settle a Chapter 40 claim has been reduced from nearly \$20,000 to less than \$10,000;
- Number of Chapter 40 notices have fallen by more than 40 percent.

The conclusions were drawn from a sample of more than 16,000 new homes sold in Southern Nevada from 2010 through the end of 2016.

“We were hopeful that the reforms from 2015 would be positive for both homeowners and contractors,” said Victor Rameker, the president of the Nevada Home Builders Association. “The results of this study are dramatic evidence that the new law is working for both stakeholders.”

Also, the study results prove that the Chapter 40 process remains a viable and accessible tool for helping homeowners resolve construction defect disputes. For example, in 2016, the first full year under the reformed Chapter 40 law, more than 100 notices covering nearly 500 new homes were sent to builders and subcontractors.

“The fact that Chapter 40 notices are still being generated seems to further validate that the 2015 reforms made necessary changes to the law while preserving homeowner access to justice,” Rameker said.

Assembly Bill 125 was signed in to law by Gov. Brian Sandoval on February 24, 2015. The law was the first comprehensive reform of Nevada’s construction defect statute in more than a decade.

In sum, the evidence presented to Nevada lawmakers in 2015 showed the following:

-Between 2006 and 2012, construction defect lawsuits in Nevada increased by 355 percent, while new home construction decreased by 86 percent, according to the report, “The Nevada Housing Market: Prospects for Recovery,” which was released in February 2015 by the UNLV Center for Business & Economic Research.

- Nevada homeowners were 38 times more likely to be involved in a construction defect lawsuit than homeowners in other states, according to the UNLV Center for Business & Economic Research report.

Further, a study and report by Luce Research for the Nevada Home Builders Association in February 2015 indicated the following:

- Only 3 percent of homeowners involved in litigation sought an attorney;
- 77 percent of homeowners involved in litigation became part of a case arranged by others;
- 70 percent of homeowners involved in litigation became aware of it after the fact;
- The average resolution for a construction defect matter was 2.6 years.

Also, attorney fees compared with homeowner recovery was out of balance. In one case, the court awarded \$10 million in legal fees and costs compared with \$585,000 for actual damages. Just the interest alone on the fees was 3 times the actual damages. (*Aventine-Tramonte Homeowners Association v. Vanguard Piping System, Case No. 08A555328, Clark County District Court.*)

At the time, attorney’s fees and costs were considered an entitlement, and coupled with the broad definition of a construction defect, unsurprisingly led to outcomes like the one described above.

Insurance costs for homebuilders were significantly higher than neighboring states. Specifically, Nevada was 53 percent higher than Utah, 35 percent higher than Arizona, and 28 percent higher than California, based on inquiries by the Southern Nevada Home Builders Association in 2015.

The Nevada Home Builders Association supported AB 125 with two overall goals in mind: First, to encourage prompt resolutions of disputes with clear rules, definitions and predictable procedures that all parties comply with and understand, and second, to resolve disputes by having an incentive to work cooperatively toward an outcome that is fair to everyone.

The following reforms were put in place by AB 125:

- A clear definition of a construction defect that requires either physical damage to a residence or an unreasonable risk of physical damage to persons or property;
- Remove the unique construction defect statutory entitlement to attorney's fees and costs;
- Set forth a consistent 6-year statute of repose on construction defect claims;
- Require that notices of construction defects be specific – including the exact location of the defect – so that a builder can pinpoint problems and get them fixed;
- Require a homeowner to verify that a defect is present in their home, and be present during a home inspection to identify the location of the defect;
- Limit homeowner association cases to common areas. This directly addressed the significant problems in Las Vegas where HOA's were commandeered by a small minority and steered into construction defect litigation with limited involvement from the community. Several of those abuses resulted in in criminal prosecutions;
- Require notices of defects to be on a house by house basis – removed the prior rule allowing for notices to be based on similarly situated homes;
- Require that available home warranties be explored and exhausted before going to court;
- Allows for binding pre-litigation offers of judgment. This allows a plaintiff to make an offer of judgment from the start, and allows a court to award fees and costs if a reasonable offer is rejected;
- And set forth clear rules on the scope of indemnification clauses between homebuilders and subcontractors.

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