

ASSEMBLY BILL NO. 285—ASSEMBLYMEN HANSEN, GOEDHART, HARDY, ELLISON, HAMBRICK; GOICOECHEA, GRADY, HAMMOND, HICKEY, KITE, LIVERMORE, MCARTHUR AND STEWART

MARCH 16, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing an award of attorney’s fees in causes of action for constructional defects. (BDR 3-607)

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

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

AN ACT relating to constructional defects; revising provisions governing an award of attorney’s fees in causes of action for constructional defects; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law generally provides that a claimant may recover reasonable
2 attorney’s fees as part of the claimant’s damages in a cause of action for
3 constructional defects. (NRS 40.655) This bill removes this provision and instead
4 authorizes a court to award reasonable attorney’s fees to a prevailing party involved
5 in such a cause of action if an independent basis for the award exists pursuant to
6 existing law which authorizes a court to award attorney’s fees in certain
7 circumstances, or Rule 68 of the Nevada Rules of Civil Procedure, which provides
8 for the payment of reasonable attorney’s fees by an offeree who rejects an offer and
9 subsequently fails to obtain a more favorable judgment.

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

1 **Section 1.** NRS 40.655 is hereby amended to read as follows:
2 40.655 1. Except as otherwise provided in NRS 40.650, in a
3 claim governed by NRS 40.600 to 40.695, inclusive, the claimant
4 may recover only the following damages to the extent proximately
5 caused by a constructional defect:



- 1 (a) ~~Any reasonable attorney's fees;~~
2 ~~(b)~~ The reasonable cost of any repairs already made that were
3 necessary and of any repairs yet to be made that are necessary to
4 cure any constructional defect that the contractor failed to cure and
5 the reasonable expenses of temporary housing reasonably necessary
6 during the repair;
7 ~~(e)~~ (b) The reduction in market value of the residence or
8 accessory structure, if any, to the extent the reduction is because of
9 structural failure;
10 ~~(d)~~ (c) The loss of the use of all or any part of the residence;
11 ~~(e)~~ (d) The reasonable value of any other property damaged
12 by the constructional defect;
13 ~~(f)~~ (e) Any additional costs reasonably incurred by the
14 claimant, including, but not limited to, any costs and fees incurred
15 for the retention of experts to:
16 (1) Ascertain the nature and extent of the constructional
17 defects;
18 (2) Evaluate appropriate corrective measures to estimate the
19 value of loss of use; and
20 (3) Estimate the value of loss of use, the cost of temporary
21 housing and the reduction of market value of the residence; and
22 ~~(e)~~ (f) Any interest provided by statute.
23 2. The ~~amount of any~~ *court may award reasonable* attorney's
24 fees ~~awarded pursuant to this section must be approved by the~~
25 ~~court.] to a prevailing party in a claim governed by NRS 40.600 to~~
26 ~~40.695, inclusive, if an independent basis for such an award exists~~
27 ~~pursuant to NRS 17.115, 18.010 or 40.650, or Rule 68 of the~~
28 ~~Nevada Rules of Civil Procedure.~~
29 3. If a contractor complies with the provisions of NRS 40.600
30 to 40.695, inclusive, the claimant may not recover from the
31 contractor, as a result of the constructional defect, anything other
32 than that which is provided pursuant to NRS 40.600 to 40.695,
33 inclusive.
34 4. This section must not be construed as impairing any
35 contractual rights between a contractor and a subcontractor, supplier
36 or design professional.
37 5. As used in this section, "structural failure" means physical
38 damage to the load-bearing portion of a residence or appurtenance
39 caused by a failure of the load-bearing portion of the residence or
40 appurtenance.
41 **Sec. 2.** The amendatory provisions of this act apply to any
42 claim that arises on or after October 1, 2011.

