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Law in Hand

A Guide To Construction Defects

Construction Defect claims in Nevada are governed by Nevada Revised Statutes 40.600-40.695, often referred to as "Chapter 40". Pursuant to Chapter 40.655, upon showing that constructional defects exist, a homeowner may recover money, also known as "damages", for the following: The cost to repair the constructional defect, reimbursement for previous repairs necessitated by the constructional defect, attorney's fees and costs, expert fees and costs, money to compensate for the loss of use of any part, or all, of the residence, the reasonable value of other property damaged by the constructional defect, the reduction in market value of the residence to the extent such reduction is because of a structural failure caused by a construction defect, other reasonable costs and any interest provided by statute.

Must I file a lawsuit to get repairs made or obtain the money I need to make repairs?

Not always. In some instances a homeowner can obtain satisfactory repairs, or money to make repairs, from the builder/developer/contractor ("contractor") without the need of filing a lawsuit. However, before a lawsuit can be filed, a homeowner must have initiated the Chapter 40 process, i.e., put the contractor on notice of the construction defects as outlined in Chapter 40. Initiating the Chapter 40 process does not preclude meaningful negotiations. In fact, Chapter 40 requires (in most cases) the parties involved in a dispute over construction defects to participate in a mediation before a lawsuit can be filed.

How does the Chapter 40 process work?

Once problems are identified in the home, such as water damage, cracks in the walls or stucco, etc., an attorney can be contacted. Typically the attorney will hire a construction expert to perform an initial inspection of the home. The *initial inspection is merely a "visual" inspection*. It consists of one or more construction experts walking around inside, outside, and sometimes on the roof of the home. It usually takes less than an hour. There may be subsequent inspections to allow the contractor's expert an opportunity to observe and evaluate the defects. If defects are found, the Chapter 40 process may be initiated by sending the contractor a certified return receipt "Chapter 40 letter" indicating the existence of construction defects.

The contractor has 90 days to respond to each defect identified in the Chapter 40 letter and state whether the contractor will repair the defect, offer money as compensation for the defect or disclaim liability for the defect and state the reasons for the disclaimer. If the home is a year old or less when the Chapter 40 Notice is received by the Contractor, repairs (if elected to be made) shall be completed within 45 days of receiving the Notice. If the Chapter 40 letter alleges that the defect is common to a group of homes and is accompanied by an expert report stating that they would expect to find the defect in other homes, the contractor has 60 days to respond. If the contractor does not respond, the homeowner may immediately file suit.

If the Chapter 40 letter includes 4 or less named homeowners, the contractor will have 105 days from the date the Chapter 40 Notice is received to make the repairs. If there are 5 or more named homeowners, the contractor will have 150 days to make the repairs. It is important to understand that Chapter 40 allows the contractor to make any repair the contractor believes is appropriate. However, within 30 days of making the repairs, the contractor must supply the homeowner with a written statement regarding what was repaired and how. *The contractor cannot require that the homeowner release them from liability in order to perform the repairs.*

If the repairs are unsatisfactory and no settlement is reached the homeowner may file suit. If any defects are found that pose an imminent threat to the health or safety of inhabitants, they must be cured by the contractor as soon as practicable. If the contractor does not make a reasonable effort to cure these defects, the homeowner may have the defect cured and may recover monies for the repairs made and attorney's fees.

How does mediation work?

If the contractor responds to the Chapter 40 Notice but does not make all of the repairs, and no settlement has been reached, the next step is mediation. Mediation is a non-binding process where a neutral mediator attempts to resolve the claim through an agreement by both parties. If the contractor responds, but does not satisfy the homeowner, the parties must enter mediation.

From the date the parties have selected a mediator:

30 days - The mediator must convene the mediation.

45 days - The mediator must complete the mediation, unless the parties agree to extend the time.

The benefit to initiating the Chapter 40 process as soon as possible is that if the mediation is unsuccessful, the homeowner may then file a lawsuit without undue delay.

What can I expect during litigation?

During the process of the lawsuit, many things will take place. Several visual inspections will again be performed, this time with all of the sub-contractors involved. A Case Management Order "CMO" will be completed by the plaintiff's and defendant's attorneys. A CMO is what basically drives the case. The CMO dictates the dates for visual inspections, destructive testing, mediations, and trial.

Are there deadlines for initiating the Chapter 40 process?

Yes. In addition to Chapter 40, there are strict and very complicated time limitations that can forever bar a homeowner from filing a lawsuit. These time limitations are called statutes of limitations and statutes of repose. After a defect is discovered, statutes of limitations bar lawsuits from being filed after a certain time period passes. For example, a homeowner may have as little as three years from the date he/she knew, or should have reasonably known, of a defect to initiate the Chapter 40 process. Statutes of repose bar lawsuits after a certain period time, regardless of whether the damage or injury has been discovered, and this time begins running after substantial completion of the home. By way of example, if the claim is based on a latent or "hidden" defect, meaning something not readily apparent like leaky pipes behind a wall where there are no visible stains, the homeowner may bring the claim within eight (8) years of the house being built. It is important that you consult an attorney whenever determining if a time limitation may apply. You should be aware, however, that *the statutes are tolled, meaning the clock stops running, when a Chapter 40 letter is sent to the contractor.*

Timeline of the Construction Defect Process

From the date the Chapter 40 letter is received by the contractor:

45 days If a home is 1 year old or less, repairs must be completed within 45 days of receipt of Chapter 40 Notice.

60 days Contractor may respond to a Chapter 40 letter, which alleges a common constructional defect, and state whether they elect to repair.

90 days Contractor must respond to the Chapter 40 letter and state whether they elect to repair. If the Contractor does not respond in the allotted time, the homeowner may file a lawsuit.

105 days Contractor may make repairs in claims involving 4 or less homeowners.

150 days Contractor may make repairs in claims involving 5 or more homeowners.

Due to the complexity of Construction Defect lawsuits, a timeline cannot always be predicted. Typically, if mediation is unsuccessful and a lawsuit is filed, the claim is resolved or proceeds to a jury trial in approximately 15 to 18 months.