

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 24-0290.02 Jery Payne x2157

SENATE BILL 24-106

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A BILL FOR AN ACT

101 **CONCERNING LEGAL ACTIONS BASED ON CLAIMED DEFECTS IN**
102 **CONSTRUCTION PROJECTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

In the "Construction Defect Action Reform Act" (act), Colorado law establishes procedures for bringing a lawsuit for a construction defect (claim). **Section 2** of the bill clarifies that a person that has had a claim brought on the person's behalf is also considered a claimant, and therefore, the act applies to the person for whom the claim is brought.

Sections 3 and 6 create a right for a construction professional to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

remedy a claim made against the construction professional by doing remedial work or hiring another construction professional to perform the work. The following applies to the remedy:

- The construction professional must notify the claimant and diligently make sure the remedial work is performed; and
- Upon completion, the claimant is deemed to have settled and released the claim, and the claimant is limited to claims regarding improper performance of the remedial work.

Currently, a claim may be held in abeyance if the parties have agreed to mediation. **Section 3** also adds other forms of alternative dispute resolution for which the claim would be held in abeyance. Alternative dispute resolution is binding. If a settlement offer of a payment is made and accepted in a claim, the payment constitutes a settlement of the claim and the cause of action is deemed to have been released, and an offer of settlement is not admissible in any subsequent action or legal proceeding unless the proceeding is to enforce the settlement.

To bring a claim or related action, **section 4** requires a unit owners' association (association) to obtain the written consent of at least two-thirds of the actual owners of the units in the common interest community. The consent must contain the currently required notices, must be signed by each consenting owner, and must have certain attestations.

Under the act, a claimant is barred from seeking damages for failing to comply with building codes or industry standards unless the failure results in:

- Actual damage to real or personal property;
- Actual loss of the use of real or personal property;
- Bodily injury or wrongful death; or
- A risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants.

Section 5 requires the actual property damage to be the result of a building code violation and requires the risk of injury or death or the threat to life, health, or safety to be imminent and unreasonable.

Under current law, an association may institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting a common interest community. For a construction defect matter to affect a common interest community, **section 7** requires that the matter concern real estate that is owned by the association or by all members of the association.

Section 7 also establishes that, when an association makes a claim or takes legal action on behalf of unit owners when the matter does not concern real estate owned by the association:

- The association and each claim are subject to each defense, limitation, claim procedure, and alternative dispute resolution procedure that each unit owner would be subject

- to if the unit owner had brought the claim; and
The association has a fiduciary duty to act in the best interest of each unit owner.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds that:

4 (a) Access to affordable, quality housing is foundational to
5 personal and financial stability and provides safety and life sustaining
6 shelter, but it is also a vehicle for reducing childhood poverty and
7 increasing economic mobility and intergenerational wealth;

8 (b) Colorado has a challenge insofar as, according to the state
9 demographer, it has the sixth most expensive housing market in the
10 nation;

11 (c) Our state's housing supply has not kept pace with our
12 population growth. Between 2010 and 2020, the state added 126,000
13 fewer housing units than in the prior decade, and as of 2022, Colorado
14 has an unmet housing need of between 65,000 and 100,000 units.

15 (d) To address this challenge, Colorado must not only increase the
16 number of homes that are available for purchase or rent, but it must also
17 ensure that the increased supply is a diverse combination of rental and
18 home ownership opportunities that will meet the needs, preferences, and
19 varied income levels of the people in our state;

20 (e) Multifamily for-sale housing is a critical component of this
21 solution because it helps close the affordability gap and adds a needed
22 element to the diverse mix of housing options the state can offer
23 Coloradans, and historically condominiums have been the most affordable
24 housing choice for owner-occupied housing;

1 (f) Notwithstanding the fact that Colorado's population today is
2 20% greater than what it was in 2008, condominium construction in the
3 front range has slowed dramatically and is now 76% lower than it was in
4 the years between 2002 and 2008, and between 2007 and 2022, the
5 number of entities developing condominiums decreased by 84%;

6 (g) Despite the downturn in construction, consumer demand for
7 condominiums remains strong in Colorado;

8 (h) There were 2.4 resold condominiums for every new
9 condominium sale in 2005, but in 2022, there were 30 condominium
10 resales for every new sale, and this is especially true for affordably priced
11 condominiums;

12 (i) At the same time that fewer mid-priced condominiums are
13 being built, they are also becoming increasingly more expensive to
14 construct, and that cost is passed on to the consumer in the form of higher
15 sales prices;

16 (j) In 2005, the majority of new and existing condominium units
17 were priced under \$300,000 because of an adequate supply, but by 2023,
18 only 2% of new condominiums built were priced under \$300,000, and due
19 to the severe lack of supply, currently only one-third of resale
20 condominiums are available for a price under \$300,000;

21 (k) While costs of labor and materials costs are increasing for all
22 types of home construction, the cost increases associated with
23 condominium construction have outpaced those associated with
24 single-family home construction, and this is particularly evident as it
25 relates to the cost for contractors' liability insurance;

26 (l) In Colorado, the high costs and frequency of construction
27 liability litigation related to condominium development have driven

1 insurance companies to raise insurance rates for developers;

2 (m) In recent years, insurance costs for condominiums surged to
3 5.5% of a project's hard costs, which was more than 233% higher than the
4 insurance costs of multifamily rental home projects; and

5 (n) Colorado needs balanced public policy that decreases
6 insurance costs by reducing the magnitude and frequency of defect
7 claims, ensures that every homeowner has the right to pursue timely and
8 effective remedies for defective construction, and ensures that such
9 remedies are fair to the home buyer but do not prevent the construction
10 of affordable multifamily for-sale housing options.

11 (2) The general assembly declares that this act will help bring
12 down the building costs of affordably priced homes and create more
13 opportunities to build wealth for Coloradans through home ownership.

14 **SECTION 2.** In Colorado Revised Statutes, 13-20-802.5, **amend**
15 (3); and **add** (6) as follows:

16 **13-20-802.5. Definitions.** As used in this part 8, unless the
17 context otherwise requires:

18 (3) (a) "Claimant" means a person other than the attorney general
19 or the district attorneys of the several judicial districts of the state ~~who~~
20 THAT:

21 (I) Asserts, AS THE OWNER OF THE AFFECTED PROPERTY OR AS A
22 PERSON THAT HAS STATUTORY STANDING TO BRING A CLAIM ON BEHALF
23 OF ANOTHER, a claim against a construction professional; ~~that~~ AND

24 (II) Alleges a defect in the construction of an improvement to real
25 property.

26 (b) "CLAIMANT" INCLUDES A PERSON THAT HAS HAD A CLAIM
27 BROUGHT ON THE PERSON'S BEHALF UNDER A STATUTE GRANTING

1 STANDING TO ANOTHER PERSON TO BRING THE CLAIM ON THE PERSON'S
2 BEHALF.

3 (6) "RIGHT TO REMEDY" MEANS THE RIGHT, DESCRIBED IN SECTION
4 13-20-809 (2), TO CURE A CLAIM, DESCRIBED IN SECTION 13-20-809 (1)(a).

5 **SECTION 3.** In Colorado Revised Statutes, 13-20-803.5, **amend**
6 (3), (5), (6), and (7) as follows:

7 **13-20-803.5. Notice of claim process.** (3) (a) Within thirty days
8 following the completion of the inspection process conducted pursuant to
9 subsection (2) of this section, or within forty-five days following the
10 completion of the inspection process in the case of a commercial
11 property, a construction professional may, BUT DOES NOT HAVE A DUTY
12 TO, send or deliver to the claimant, by certified mail, return receipt
13 requested, or BY personal service:

14 (I) An offer to settle the claim by payment of a sum certain or by
15 agreeing to remedy the claimed defect described in the notice of claim;
16 OR

17 (II) A NOTICE THAT THE CONSTRUCTION PROFESSIONAL IS
18 INVOKING THE RIGHT TO REMEDY.

19 (b) A written offer to remedy the construction defect ~~shall~~ MUST
20 include a report of the scope of the inspection, the findings and results of
21 the inspection, a description of the additional construction work necessary
22 to remedy the defect described in the notice of claim and all damage to
23 the improvement to real property caused by the defect, and a timetable for
24 the completion of the remedial construction work.

25 (5) (a) A claimant who accepts a construction professional's offer
26 to remedy or settle by payment of a sum certain a construction defect
27 claim shall do so by sending the construction professional a written notice

1 of acceptance no later than fifteen days after receipt of the offer. If an
2 offer to settle is accepted, then the monetary settlement shall be paid in
3 accordance with the offer.

4 (b) If an offer to remedy is accepted by the claimant, the
5 CONSTRUCTION PROFESSIONAL SHALL COMPLETE OR CAUSE TO BE
6 COMPLETED THE remedial construction work ~~shall be completed~~ in
7 accordance with the timetable set forth in the offer unless the delay is
8 caused by events beyond the reasonable control of the construction
9 professional.

10 (c) IF THE RIGHT TO REMEDY IS INVOKED, THE CONSTRUCTION
11 PROFESSIONAL SHALL CAUSE THE REMEDIAL WORK TO BE COMMENCED
12 AND DILIGENTLY PURSUED TO COMPLETION. UPON COMPLETION:

13 (I) THE CLAIMANT IS DEEMED TO HAVE SETTLED, COMPROMISED,
14 AND RELEASED THE CLAIM; AND

15 (II) THE CLAIMANT IS LIMITED TO CLAIMS REGARDING IMPROPER
16 PERFORMANCE OF THE REMEDIAL WORK.

17 (6) (a) If no offer is made by the construction professional, ~~or~~ if
18 the claimant rejects an offer, OR IF THE CONSTRUCTION PROFESSIONAL
19 DOES NOT INVOKE THE RIGHT TO REMEDY, the claimant may bring an
20 action against the construction professional for the construction defect
21 claim described in the notice of claim unless the parties have
22 contractually agreed to a ~~mediation procedure~~ USE A BINDING
23 ALTERNATIVE DISPUTE RESOLUTION PROCESS, in which case the ~~mediation~~
24 ~~procedure shall be satisfied prior to bringing an action~~ BINDING
25 ALTERNATIVE DISPUTE RESOLUTION PROCESS MUST DETERMINE THE
26 DISPOSITION OF THE CLAIM.

27 (b) IF AN OFFER MADE PURSUANT TO SUBSECTION (3)(a)(I) OF THIS

1 SECTION IS ACCEPTED BY THE CLAIMANT, THE PAYMENT CONSTITUTES A
2 SETTLEMENT OF THE CLAIM AND THE CLAIMANT IS DEEMED TO HAVE
3 RELEASED THE CLAIM AND THE CAUSE OF ACTION. AN OFFER OF
4 SETTLEMENT IS NOT ADMISSIBLE IN ANY SUBSEQUENT ACTION OR LEGAL
5 PROCEEDING UNLESS THE SUBSEQUENT ACTION OR LEGAL PROCEEDING IS
6 BROUGHT TO ENFORCE THE SETTLEMENT.

7 ~~(7) If an offer by a construction professional is made and~~
8 ~~accepted, and if thereafter the construction professional does not comply~~
9 ~~with its offer to remedy or settle a claim for a construction defect, The~~
10 claimant may file an action against the construction professional for
11 claims arising out of the defect or damage described in the notice of claim
12 without further notice IF:

13 (a) AN OFFER BY A CONSTRUCTION PROFESSIONAL IS MADE AND
14 ACCEPTED AND THE CONSTRUCTION PROFESSIONAL DOES NOT COMPLY
15 WITH THE OFFER TO REMEDY OR SETTLE A CLAIM FOR A CONSTRUCTION
16 DEFECT;

17 (b) A CONSTRUCTION PROFESSIONAL INVOKES THE RIGHT TO
18 REMEDY AND DOES NOT COMPLETE THE REMEDIAL WORK FOR REASONS
19 OTHER THAN THE CLAIMANT'S FAILURE TO COOPERATE OR DELAYS
20 OUTSIDE OF THE CONSTRUCTION PROFESSIONAL'S CONTROL; OR

21 (c) THE PARTIES HAVE EITHER:

22 (I) NOT CONTRACTUALLY AGREED TO USE AN ALTERNATIVE
23 DISPUTE RESOLUTION PROCESS; OR

24 (II) SATISFIED THE ALTERNATIVE DISPUTE RESOLUTION PROCESS.

25 **SECTION 4.** In Colorado Revised Statutes, **add** 13-20-803.7 as
26 follows:

27 **13-20-803.7. Homeowners' association actions.** TO BRING A

1 CONSTRUCTION DEFECT CLAIM OR RELATED ACTION, A HOMEOWNERS'
2 ASSOCIATION MUST OBTAIN THE WRITTEN CONSENT OF AT LEAST
3 TWO-THIRDS OF THE ACTUAL OWNERS OF THE UNITS. THE WRITTEN
4 CONSENT MUST CONTAIN SUBSTANTIALLY THE SAME NOTICE REQUIRED IN
5 SECTION 38-33.3-303.5, MUST BE SIGNED BY EACH CONSENTING UNIT
6 OWNER, AND MUST INCLUDE AN AFFIDAVIT FROM EACH UNIT OWNER
7 VERIFYING THAT EACH CLAIMED DEFECT EXISTS IN THE UNIT OWNER'S
8 HOME AND ACKNOWLEDGING THAT THE UNIT OWNER HAS BEEN INFORMED
9 OF THE UNIT OWNER'S DUTY TO DISCLOSE OBLIGATIONS UNDER COLORADO
10 LAW.

11 **SECTION 5.** In Colorado Revised Statutes, 13-20-804, **amend**
12 (1) introductory portion, (1)(a), and (1)(d) as follows:

13 **13-20-804. Restriction on construction defect negligence**
14 **claims.** (1) ~~No negligence claim seeking damages for a construction~~
15 ~~defect may be asserted in~~ A CLAIMANT IS BARRED FROM BRINGING OR
16 MAINTAINING A CONSTRUCTION DEFECT CLAIM AS AN ACTION IF ~~such~~ THE
17 claim arises from the failure to construct an improvement to real property
18 in substantial compliance with an applicable building code or industry
19 standard; except that ~~such~~ THE claim may be asserted if ~~such~~ THE failure
20 ~~results in~~ CAUSES one or more of the following:

21 (a) Actual damage to real or personal property CAUSED BY THE
22 VIOLATION OF A CODE ADOPTED UNDER ARTICLE 115 OR 155 OF TITLE 12,
23 PART 2 OF ARTICLE 28 OF TITLE 30, OR PART 6 OF ARTICLE 15 OF TITLE 31;

24 (d) ~~A~~ AN IMMINENT AND UNREASONABLE risk of bodily injury or
25 death to, or ~~a~~ AN IMMINENT AND UNREASONABLE threat to the life, health,
26 or safety of, the occupants of the residential real property.

27 **SECTION 6.** In Colorado Revised Statutes, **add** 13-20-809 and

1 13-20-810 as follows:

2 **13-20-809. Right to remedy.** (1) (a) AFTER RECEIVING A NOTICE
3 OF CLAIM IN ACCORDANCE WITH SECTION 13-20-803.5 (1), A
4 CONSTRUCTION PROFESSIONAL MAY INVOKE THE RIGHT TO REMEDY TO
5 CURE A CLAIM BY:

6 (I) COMPLYING WITH SUBSECTION (1)(b) OF THIS SECTION; AND

7 (II) PERFORMING THE WORK OR HIRING A CONSTRUCTION
8 PROFESSIONAL TO PERFORM THE WORK.

9 (b) TO INVOKE THE RIGHT TO REMEDY AFTER RECEIVING A NOTICE
10 OF CLAIM IN ACCORDANCE WITH SECTION 13-20-803.5 (1), A
11 CONSTRUCTION PROFESSIONAL MUST NOTIFY THE CLAIMANT THAT SENT
12 THE NOTICE OF CLAIM THAT THE CONSTRUCTION PROFESSIONAL INTENDS
13 TO INVOKE THE RIGHT TO REMEDY.

14 (2) WHEN A CONSTRUCTION PROFESSIONAL INVOKES THE RIGHT TO
15 REMEDY, THE FILING OF AN ACTION BY A CLAIMANT IS SUBJECT TO SECTION
16 13-20-803.5.

17 **13-20-810. No separate cause of action.** THIS PART 8 DOES NOT
18 CREATE A SEPARATE CAUSE OF ACTION.

19 **SECTION 7.** In Colorado Revised Statutes, 38-33.3-302, **add**
20 (3)(c) as follows:

21 **38-33.3-302. Powers of unit owners' association.** (3) (c) (I) FOR
22 A MATTER TO AFFECT THE COMMON INTEREST COMMUNITY UNDER THIS
23 SUBSECTION (3) AND SUBSECTION (1)(d) OF THIS SECTION IN A
24 CONSTRUCTION DEFECT CLAIM OR LEGAL ACTION, THE MATTER MUST
25 CONCERN REAL ESTATE THAT IS OWNED BY THE ASSOCIATION OR BY ALL
26 MEMBERS OF THE ASSOCIATION.

27 (II) IF AN ASSOCIATION TAKES AN ACTION UNDER SUBSECTION

1 (1)(d) OF THIS SECTION FOR A CONSTRUCTION DEFECT ON BEHALF OF TWO
2 OR MORE UNIT OWNERS AND THE MATTER DOES NOT CONCERN REAL
3 ESTATE OWNED BY THE ASSOCIATION:

4 (A) THE ASSOCIATION AND EACH CLAIM ARE SUBJECT TO EACH
5 DEFENSE, LIMITATION, CLAIM PROCEDURE, AND ALTERNATIVE DISPUTE
6 RESOLUTION PROCEDURE THAT EACH UNIT OWNER WOULD BE SUBJECT TO
7 IF THE UNIT OWNER HAD BROUGHT THE CLAIM; AND

8 (B) THE ASSOCIATION HAS A FIDUCIARY DUTY TO ACT IN THE BEST
9 INTEREST OF EACH UNIT OWNER, SEPARATE AND APART FROM ANY
10 INTEREST THE ASSOCIATION MAY HAVE IN THE MATTER.

11 **SECTION 8. Act subject to petition - effective date -**
12 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
13 the expiration of the ninety-day period after final adjournment of the
14 general assembly; except that, if a referendum petition is filed pursuant
15 to section 1 (3) of article V of the state constitution against this act or an
16 item, section, or part of this act within such period, then the act, item,
17 section, or part will not take effect unless approved by the people at the
18 general election to be held in November 2024 and, in such case, will take
19 effect on the date of the official declaration of the vote thereon by the
20 governor.

21 (2) This act applies to actions and notices of claims received on
22 or after the applicable effective date of this act.