

Construction Defect Ordinance

**Common Interest Communities
Condominiums & Townhomes**

November 24, 2015

Recent History of Construction Defect Reforms:

- In 2015, the Colorado state legislature had broad support for reform of construction defects laws that affect common interest communities (generally condominiums and townhomes), but these measures did not receive a full vote.
- SB 15-177 proposed changes to CRS 13-33-101, *et seq.* (the Colorado Common Interest Ownership Act):
 - **Prohibiting amendment** of condominium declaration provisions that require arbitration/mediation of construction defect claims, and
 - Requiring **informed consent** by majority of unit owners before homeowners association executive boards file construction defect claims.

Front Range Municipalities Have Considered Various Measures Since SB 15-177 Failed:

1. Enhanced HOA notice and **informed homeowner consent** to file claims
2. Builder **rights to repair** construction defects
3. Facilitation of **cash settlements** in lieu of repairs for construction defect claims
4. **Limits on amendments** of arbitration provisions in declarations
5. Limitation of the **applicability of local building code** standards to support insubstantial claims

Summary of Local Ordinances

	Colorado Springs Proposal	*Denver	Aurora	Parker	Lone Tree	Lakewood	Commerce City	Littleton	Wheat Ridge	Arvada
Homeowner Informed Consent to Sue	X	X	X		X	X	X	X	X	
Builder Right to Repair	X		X		X	X	X	X	X	
Cash Settlements in Lieu of Repair	X		X							
Limits on Ability to Amend Arbitration/Mediation Requirements in Declarations		X	X	X	X	X	X	X	X	X
Limitation of Applicability of Local Building Codes to Support Claims	X	X								
* The 2 nd reading of Denver's ordinance is November 23, 2015.										

Colorado Springs Proposed Ordinance:

- Cover same bases as other jurisdictions except for limiting amendments to arbitration provisions in declarations. Why?
 - The Colorado Court of Appeal's ruling in *Vallagio at Inverness Res. Condo Ass'n v. Metro Homes*, 14CA1154 (Colo.App 2015) **already permits arbitration to be imposed privately** through condominium declarations that require developer consent to amend.

Legislative Walk Through:

6.14.101 Legislative Declaration

- Encourage more dense developments of residential housing
- Provide information and governance tools to homeowners in common interest communities
- Encourage correction of construction defects

6.14.102 Applicability

Applies **only** to:

- Newly permitted construction in residential “common interest communities”
- “Real estate described in a declaration . . . to which a person, by . . . ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in the declaration.” CRS 38-33.3-103(8).

6.14.103 Definitions

- BUILDER – very inclusive definition, developers, architects, engineers, contractors, and sub-contractors
- CONSTRUCTION DEFECT – requires defects to be material, actually resulting in damage or risk of harm
- “A defect in the design or construction of any improvement to real property that causes: (i) **actual damage** to real or personal property, (ii) **actual loss of use** of real or personal property, (iii) bodily injury or wrongful death, **or** (iv) a substantial risk of bodily injury or death to, or **a threat to the life, health, or safety** of, the occupants of residential real property.”
 - This could include claims based upon items covered under the building code or other standards
 - It would not include claims for items that are addressed by the building code if constructed in substantial compliance with the building code (see 6.14.301)
- HOMEOWNER – a unit owner or an association, but not developers and lenders

6.14.104 Notice to Homeowners

- If there is a construction defect affecting five (5) or more units notice must go to all homeowners
- This notice includes more information that required in notices under state law (CCIOA):
 - nature of the action and the relief sought
 - attorney's fees and expenses
 - date that statute of limitation/repose runs
 - expected recovery
 - whether there is a contingency fee arrangement and how expenses are covered
 - potential fees and costs if unsuccessful
 - that repairs may be needed even if unsuccessful
 - **sales and financing may be problematic**
 - how long claim could be pending
 - whether the builder has offered/made repairs
 - how builder has address the alleged construction defects

6.14.105 Consent of Homeowners

- **Consent of majority of homeowners** is required prior to the homeowners association filing suit
- Declarants and lenders are not considered in the voting

6.14.201 Homeowners Association Notice of Claim to Builder

- Requires homeowners association to send notice of claimed defects to builder
- Applies to defects affecting common areas or more than one (1) unit

6.14.202 Builder Responsibilities After Notice

- Builder must:
- acknowledge notice of claim within fifteen (15)
- provide any requested documents within forty-five (45) days
- complete inspections within forty-five (45) days
- provide notice that all documents and inspections have been furnished

6.14.203 Monetary Settlement or Builder Right to Repair

Builder Cash Settlement and Repair Options:

- Within thirty (30) days after inspection builder may make offer to settle for monetary sum or to repair defects
- Permits homeowners association fifteen (15) days to object to the cash settlement or proposed repair
- Permits builder to proceed with repair and/or to modify repair based on homeowners association objections
- Requires owners association and affected homeowners to cooperate with the repairs
- Requires builder to notify owners association of substantial completion of repairs
- Gives homeowners association forty-five (45) days to inspect repairs
- Provides that homeowners association may proceed with claims against the builder if it does not make offers or follow through with any cash settlement or repair
- **Homeowners associations and homeowners may still sue if they believe in good faith construction defects have not been fixed**

Colorado Springs Proposed Ordinance:

DOES:

- Apply to “common interest communities” (condominiums/townhomes)
- Apply to construction permitted after the effective date of ordinance
- Apply to homeowner association claims against builders
- Provide informed homeowner consent for builder litigation
- Provide builders with opportunity to offer cash settlements and/or repairs of defects
- Allow homeowners and associations to file suit if defects not repaired
- Require building code based defect claims to be based on actual damage or risk of harm

DOES NOT:

- Affect typical, detached, single family, residential homes that are not “units”
- Affect individual homeowner rights to sue
- Allow builders to avoid obligations under building codes, warranties or contracts

6.14.301 City Building Code, Effect on Construction Defect Claims in Common Interest Communities

- Limits use of the standards set forth in the building code to form the basis for legal claims in the absence of actual damage or risk of harm
- Provides that construction substantially complying with the building code is not defective for purposes of claims

Scope & Effect of Ordinance

