

**First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO**

CORRECTED PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 25-0097.01 Yelana Love x2295

HOUSE BILL 25-1272

HOUSE SPONSORSHIP

Bird and Boesenecker, Pugliese, Armagost, Bradley, Caldwell, Camacho, Clifford, Espenoza, Gilchrist, Gonzalez R., Hartsook, Keltie, Lindstedt, Phillips, Rydin, Soper, Stewart R., Taggart, Weinberg, Winter T., Woog

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House Committees

Transportation, Housing & Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING HOUSING.**

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>.)

For construction of middle market housing, **section 3** of the bill requires a person filing a construction defect action against an architect or engineer to file with the complaint an affidavit of a third-party licensed professional indicating the negligence or other action, error, or omission of the construction professional. **Section 3** also establishes a rebuttable presumption that a property does not have a construction defect when a state agency or local government has issued a certificate of occupancy for the property.

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.*

Section 4:

- Establishes a claimant's duty to mitigate an alleged construction defect and specifies how a claimant may satisfy this duty and the consequences to a claimant that fails to satisfy this duty;
- Requires that a construction professional must send or deliver to the claimant an offer to settle the claim or a written response that identifies the standards that apply to the claim and explains why the defect does not require repair; and
- Requires a construction professional who is the defendant in a construction defects action to submit specified information to the claimant.

Section 5 updates the statute of limitations for construction defect claims to 10 years unless the construction professional provided the consumer with a warranty that meets the requirements of the bill, in which case the statute of limitations is 6 years. **Section 6** tolls the statute of limitations or repose during a claimant's mitigation of an alleged construction defect claim brought for the construction of middle market housing.

Section 7 allows a construction professional that meets specified requirements to use certain affirmative defenses in construction claims brought against the construction professional for the construction of middle market housing.

Current law requires the executive board of a unit owners' association (executive board) to obtain approval from a majority of owners before initiating a construction defect claim on behalf of the owners. **Section 8** increases the approval amount to 65%. **Section 8** also requires an executive board that is successful in a construction defect claim to first use monetary damages received as a result of the claim to repair the construction defect.

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

2 **SECTION 1. Short title - legislative declaration.** (1) The short
3 title of this act is the "Colorado American Dream Act".

4 (2) The general assembly finds that:

5 (a) Homeownership is a cornerstone of economic stability, but for
6 many Coloradans, particularly first-time homebuyers, it has become
7 increasingly out of reach. Surveys show that while 90% of renters aspire

1 to own a home, more than half believe it is unattainable. This concern is
2 personal for many, with over 4 out of 5 parents expressing concerns about
3 whether their children will be able to afford to live in Colorado. Many
4 Coloradans agree that increasing the variety and availability of housing
5 options is crucial, as people want the ability to find and choose housing
6 that fits their needs, whether it's through more accessible price points or
7 housing types.

8 (b) Millennials, the largest group of homebuyers in Colorado at
9 38% of the market, are facing increasing challenges, as the median age of
10 first-time homebuyers has risen from 35 to 38 in just the past year. These
11 gaps are just a few of many that highlight the urgent need for policies that
12 facilitate affordable and attainable homeownership, particularly through
13 the construction of entry-level homes.

14 (c) Condominiums and townhomes have often served as
15 affordable starter home options, providing the first step on the
16 homeownership ladder for many Coloradans. Despite the clear need for
17 these homes, however, condominium development in Colorado has
18 drastically decreased. Before 2009, there were 1.25 new apartments for
19 every one condominium. This has shifted radically to 14 new apartments
20 for every condominium in recent years. The decline in condominium
21 construction coincides with a housing shortfall of at least 100,000 homes
22 in the state, further worsening the availability of affordable options for
23 first-time buyers.

24 (d) Current construction litigation laws are often cited as a
25 contributing factor to the high cost of construction and a deterrent for
26 developers to pursue condominium projects. At the same time,
27 homeowners have limited up-front assurances of high-quality

1 construction in new homes. It is critical that policies seek to support
2 homeowners' rights while spurring development in a key housing market.

3 (e) Without addressing these challenges, Colorado will continue
4 to experience a shortage of entry-level homes for its first-time
5 homebuyers and struggle to meet the needs of Coloradans. It is imperative
6 that the state creates policies that encourage the entire housing ecosystem
7 to work together to create more attainable housing options for
8 Coloradans.

9 (f) This act is intended to:

10 (I) Promote the construction of affordable homes so that
11 homeownership becomes a more attainable goal for a larger portion of the
12 population;

13 (II) Expand prospective homeowners' access to high-quality,
14 well-constructed homes;

15 (III) Ensure continued protections for homeowners when defects
16 in their homes exist;

17 (IV) Reform construction litigation to reduce the excessive costs
18 associated with entry-level home development;

19 (V) Strengthen Colorado's housing market by expanding
20 opportunities for first-time homebuyers; and

21 (VI) Ensure that future generations of Coloradans are able to
22 access the American dream of homeownership, which is integral to
23 long-term financial security and generational wealth-building; and

24 (g) This act is rationally related to the legitimate state interest of
25 increasing middle market housing in Colorado.

26 **SECTION 2.** In Colorado Revised Statutes, 13-20-802.5, **add**
27 (4.5) and (6) as follows:

1 **13-20-802.5. Definitions.** As used in this part 8, unless the
2 context otherwise requires:

3 (4.5) "MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM" OR
4 "PROGRAM" MEANS THE PROGRAM CREATED IN SECTION 13-20-803.3 (1).

5 (6) "THIRD-PARTY INSPECTION" MEANS A PROGRAM OF
6 INSPECTIONS OF A RESIDENTIAL HOUSING UNIT PERFORMED OVER THE
7 COURSE OF CONSTRUCTION ON THE UNIT AND DESIGNED TO ASSIST THE
8 CONSTRUCTION PROFESSIONAL PERFORMING THE CONSTRUCTION ON THE
9 UNIT IN IDENTIFYING AND RECTIFYING ANY INSTANCES IN WHICH THE
10 WORK BEING PERFORMED BY THE CONSTRUCTION PROFESSIONAL DEVIATES
11 FROM APPLICABLE BUILDING CODES OR CONSTRUCTION STANDARDS. THE
12 CONSTRUCTION PROFESSIONAL WHO SIGNS THE BUILDING PERMIT
13 APPLICATION SHALL CERTIFY IN WRITING FILED WITH THE BUILDING
14 DEPARTMENT THAT THE THIRD-PARTY INSPECTION COMPLIES WITH THE
15 FOLLOWING REQUIREMENTS FOR ANY COMPONENT, SYSTEM, OR
16 IMPROVEMENT ALLEGED TO BE DEFECTIVE:

17 (a) THE INSPECTION WAS PERFORMED BY EITHER A LICENSED
18 CONSTRUCTION PROFESSIONAL OR A BUILDING CODE INSPECTOR,
19 ELECTRICAL INSPECTOR, ENERGY CONSERVATION CODE INSPECTOR, FIRE
20 CODE INSPECTOR, OR MECHANICAL CODE INSPECTOR, IF SUCH INSPECTOR
21 PROVIDES EVIDENCE OF COMPLETION OF THE MOST RECENT VERSION OF
22 THE COMMERCIAL BUILDING INSPECTOR EXAMINATION BY THE
23 INTERNATIONAL CODE COUNCIL OR ITS SUCCESSOR ORGANIZATION:

24 (I) WHO HAS EXPERTISE DESIGNING, CONSTRUCTING, OR
25 INSPECTING THE COMPONENT, SYSTEM, OR IMPROVEMENT BEING
26 INSPECTED;

27 (II) WHO IS AN INDEPENDENT THIRD PARTY NOT EMPLOYED BY OR

1 AFFILIATED WITH THE CONSTRUCTION PROFESSIONAL WHO WAS INVOLVED
2 IN THE DEVELOPMENT, DESIGN, OR CONSTRUCTION OF THE COMPONENT,
3 SYSTEM, OR IMPROVEMENT; ■

4 (III) WHO IS RESPONSIBLE FOR PERFORMING THE INSPECTION
5 DUTIES WITH A REASONABLE DEGREE OF CARE; AND

6 (IV) WHO IS NOT DESIGNATED AS A NONPARTY AT FAULT
7 PURSUANT TO SECTION 13-21-111.5 (3)(b); AND

8 (b) THE INSPECTION INCLUDES, FOR EACH COMPONENT, SYSTEM,
9 OR IMPROVEMENT, A SIGNED CERTIFICATION THAT, FOR EACH COMPONENT,
10 SYSTEM, OR IMPROVEMENT, VERIFIES THAT:

11 (I) THE COMPONENT, SYSTEM, OR IMPROVEMENT WAS INCLUDED
12 IN APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS,
13 INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION, UNDER THE
14 VALID SEAL OF AN ARCHITECT OR ENGINEER LICENSED IN COLORADO;

15 (II) (A) PRIOR TO INSPECTION BY THE BUILDING DEPARTMENT, THE
16 COMPONENT, SYSTEM, OR IMPROVEMENT WAS SUBJECT TO A FIELD
17 INSPECTION AND APPROVAL BY THE THIRD-PARTY INSPECTOR WHO
18 CERTIFIES THAT, AT THE TIME OF INSPECTION, THE COMPONENT, SYSTEM,
19 OR IMPROVEMENT WAS SUFFICIENTLY ACCESSIBLE TO DETERMINE
20 COMPLIANCE WITH AND DID COMPLY WITH APPLICABLE MANUFACTURER'S
21 INSTRUCTIONS OR RECOMMENDATIONS, APPROVED CONSTRUCTION
22 DOCUMENTS AND SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED
23 DURING CONSTRUCTION, AND THE APPLICABLE BUILDING CODES.

24 (B) IF THE FIELD INSPECTION DOES NOT INCLUDE EVERY LOCATION
25 WHERE THE COMPONENT, SYSTEM, OR IMPROVEMENT IS CONSTRUCTED,
26 THE SIGNED ■ CERTIFICATION MUST INCLUDE THE PERMIT NUMBER; THE
27 DATE OF INSPECTION; THE TYPE OF INSPECTION; THE CONTRACTOR'S NAME

1 AND LICENSE NUMBER; THE STREET ADDRESS OF THE JOB LOCATION; THE
2 NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INSPECTOR WHO
3 PERFORMED THE INSPECTION; AND A STATEMENT THAT THE INSPECTOR
4 INSPECTED A SUFFICIENT NUMBER OF LOCATIONS TO CONCLUDE WITH A
5 REASONABLE DEGREE OF CERTAINTY THAT EVERY LOCATION OF THE
6 COMPONENT, SYSTEM, OR IMPROVEMENT COMPLIES WITH STAMPED
7 PROJECT PLANS AND SPECIFICATIONS AND THE APPLICABLE BUILDING
8 CODES.

9 (III) ANY INSTANCE OF NONCOMPLIANT DESIGN OR CONSTRUCTION
10 IDENTIFIED DURING AN INSPECTION HAS BEEN RESOLVED AND THAT THE
11 COMPONENT, SYSTEM, OR IMPROVEMENT COMPLIES WITH APPLICABLE
12 STANDARDS; AND

13 (c) THE INSPECTION IS NOT AN INSPECTION PERFORMED BY OR ON
14 BEHALF OF A GOVERNMENTAL AUTHORITY HAVING JURISDICTION OVER
15 THE RESIDENTIAL HOUSING UNIT AS A CONDITION OF ANY PERMITTING OR
16 THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY.

17 **SECTION 3.** In Colorado Revised Statutes, **add 13-20-803.3**
18 as follows:

19 **13-20-803.3. Multifamily construction incentive program -**
20 **created - construction defect claims against architects and engineers**
21 **- rebuttable presumptions - statute of limitations - affirmative**
22 **defenses.** (1) THE MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM IS
23 CREATED. ON AND AFTER JANUARY 1, 2026, A BUILDER OF MULTIFAMILY,
24 ATTACHED HOUSING OF TWO OR MORE UNITS MAY PARTICIPATE IN THE
25 PROGRAM BY:

26 (a) PROVIDING A WARRANTY THAT COVERS ANY DEFECT AND
27 DAMAGE FOR A MINIMUM PERIOD OF:

- 1 (I) ONE YEAR FOR WORKMANSHIP AND MATERIALS;
- 2 (II) TWO YEARS FOR PLUMBING, ELECTRICAL, AND MATERIALS;
- 3 AND
- 4 (III) SIX YEARS FOR MAJOR STRUCTURAL COMPONENTS; AND
- 5 (b) HAVING THE UNITS INSPECTED BY A THIRD-PARTY INSPECTOR.

6 (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION,
7 A PERSON MUST FILE WITH A COMPLAINT A CERTIFICATE OF REVIEW IN
8 COMPLIANCE WITH SECTION 13-20-602 FOR A CONSTRUCTION DEFECT
9 ACTION THAT IS:

10 (I) AGAINST A CONSTRUCTION PROFESSIONAL WHO IS AN
11 ARCHITECT OR ENGINEER; AND

12 (II) FOR A DEFECT IN THE CONSTRUCTION OF MIDDLE MARKET
13 HOUSING FOR WHICH THE BUILDER IS PARTICIPATING IN THE PROGRAM.

14 (b) THE CERTIFICATE OF REVIEW FILED IN ACCORDANCE WITH
15 SUBSECTION (2)(a) OF THIS SECTION MUST, BASED ON FACTS KNOWN TO
16 THE PARTY FILING THE CERTIFICATE OF REVIEW:

17 (I) SET FORTH THE ARCHITECT'S OR ENGINEER'S NEGLIGENCE,
18 INCLUDING ANY ACT OR OMISSION IN PROVIDING ADVICE, EXERCISING
19 JUDGMENT, GIVING AN OPINION, OR EXERCISING A SIMILAR PROFESSIONAL
20 SKILL; AND

21 (II) DECLARE THAT THE INDIVIDUAL CONSULTED CAN
22 DEMONSTRATE BY COMPETENT EVIDENCE THAT, AS A RESULT OF TRAINING,
23 EDUCATION, KNOWLEDGE, AND EXPERIENCE, THE CONSULTANT IS
24 COMPETENT TO EXPRESS AN OPINION AS TO THE NEGLIGENCE, INCLUDING
25 AN ACT OR OMISSION, ALLEGED.

26 (c) IF A CLAIMANT FAILS TO FILE THE CERTIFICATE OF REVIEW
27 REQUIRED IN THIS SUBSECTION (2), THE COURT SHALL DISMISS THE

1 COMPLAINT AGAINST THE DEFENDANT UNLESS THE CLAIMANT SHOWS
2 GOOD CAUSE FOR THE FAILURE.

3 (3) A CLAIMANT IS NOT REQUIRED TO COMPLY WITH THE
4 CERTIFICATE OF REVIEW REQUIREMENTS OF SUBSECTION (2) OF THIS
5 SECTION IF:

6 (a) A CLAIM IS FOR CONSTRUCTION IN WHICH A GOVERNMENTAL
7 ENTITY CONTRACTED WITH A SINGLE ENTITY TO PROVIDE BOTH DESIGN
8 AND CONSTRUCTION SERVICES FOR THE CONSTRUCTION, REHABILITATION,
9 ALTERATION, OR REPAIR OF A FACILITY, A BUILDING OR AN ASSOCIATED
10 STRUCTURE, A CIVIL WORKS PROJECT, OR A HIGHWAY PROJECT; OR

11 (b) THE PERIOD OF LIMITATION WOULD EXPIRE WITHIN TEN DAYS
12 AFTER THE DATE OF FILING AND, BECAUSE OF THE TIME CONSTRAINT, THE
13 CLAIMANT HAS ALLEGED THAT A CERTIFICATE OF REVIEW BY A
14 THIRD-PARTY ARCHITECT OR ENGINEER COULD NOT BE PREPARED. A
15 CLAIMANT THAT DOES NOT FILE A CERTIFICATE OF REVIEW UNDER THIS
16 SECTION SHALL SUPPLEMENT THE COMPLAINT WITH A CERTIFICATE OF
17 REVIEW WITHIN TWENTY-EIGHT DAYS AFTER THE FILING OF THE
18 COMPLAINT; EXCEPT THAT A COURT MAY, ON MOTION AND FOR GOOD
19 CAUSE, GRANT A CLAIMANT ADDITIONAL TIME TO FILE THE CERTIFICATE OF
20 REVIEW.

21 (4) A DEFENDANT THAT DESIGNATES AN ARCHITECT OR ENGINEER
22 AS A NONPARTY AT FAULT IN ACCORDANCE WITH SECTION 13-21-111.5
23 (3)(b) MUST FILE WITH THE DESIGNATION A CERTIFICATE OF REVIEW THAT
24 COMPLIES WITH SUBSECTION (2) OF THIS SECTION AND SECTION 13-20-602.
25 THE DEFENDANT SHALL FILE A DESIGNATION OF NONPARTY AT FAULT AND
26 CERTIFICATE OF REVIEW AT LEAST FORTY-FIVE DAYS PRIOR TO ANY TRIAL
27 OR PROCEEDING ON THE CLAIM. IF THE DEFENDANT FAILS TO FILE THE

1 CERTIFICATE OF REVIEW AS REQUIRED IN THIS SUBSECTION (4), A COURT
2 SHALL NOT CONSIDER THE NEGLIGENCE OR FAULT OF THE NONPARTY.

3 (5) SUBSECTIONS (2) TO (4) OF THIS SECTION DO NOT:

- 4 (a) EXTEND THE APPLICABLE PERIOD OF LIMITATION OR REPOSE; OR
- 5 (b) APPLY TO A SUIT OR ACTION FOR THE PAYMENT OF FEES
6 ARISING OUT OF THE PROVISION OF PROFESSIONAL SERVICES.

7 (6) A PERSON SHALL NOT ASSERT A CLAIM SEEKING DAMAGES IN
8 A CONSTRUCTION DEFECT ACTION FOR HOUSING BUILT BY A BUILDER WHO
9 WAS A PARTICIPANT IN THE MULTIFAMILY CONSTRUCTION INCENTIVE
10 PROGRAM AT THE TIME OF THE CONSTRUCTION UNLESS THE CLAIM HAS
11 RESULTED IN THE FOLLOWING:

- 12 (a) DAMAGE THAT AFFECTS THE FUNCTIONALITY OF A SYSTEM OR
13 THE SAFETY OF REAL OR PERSONAL PROPERTY, OTHER THAN A CONDITION
14 THAT HAS NOT CAUSED ANY SUBSTANTIAL PHYSICAL CHANGE;
- 15 (b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;
- 16 (c) ACTUAL BODILY INJURY OR WRONGFUL DEATH;
- 17 (d) AN UNREASONABLE REDUCTION IN THE CAPABILITY OF, OR AN
18 ACTUAL FAILURE OF, A BUILDING COMPONENT TO PERFORM AN INTENDED
19 FUNCTION OR PURPOSE; OR
- 20 (e) AN UNREASONABLE RISK OF BODILY INJURY OR DEATH TO, OR
21 A THREAT TO THE LIFE, HEALTH, OR SAFETY OF, THE OCCUPANTS OF THE
22 RESIDENTIAL PROPERTY.

23 (7) (a) FOR HOUSING BUILT BY A BUILDER PARTICIPATING IN THE
24 PROGRAM AND SOLD ON OR AFTER JANUARY 1, 2026, AND EXCEPT AS
25 PROVIDED IN SUBSECTION (7)(b) OF THIS SECTION, A CLAIMANT MUST
26 BRING AN ACTION FOR DAMAGES FOR A CLAIM BASED ON THE
27 CONSTRUCTION AND FILED PURSUANT TO THIS PART 8 NOT LATER THAN

1 EIGHT YEARS AFTER THE SUBSTANTIAL COMPLETION OF THE IMPROVEMENT
2 IN AN ACTION ARISING OUT OF A DEFECTIVE OR AN UNSAFE CONDITION OF
3 THE REAL PROPERTY OR A DEFICIENCY IN THE CONSTRUCTION OR REPAIR
4 OF THE IMPROVEMENT.

5 (b) (I) IF THE DEFENDANT IS A CONSTRUCTION PROFESSIONAL WHO
6 IS NOT AN ARCHITECT OR ENGINEER AND WHO HAS PROVIDED THE
7 CLAIMANT A WRITTEN WARRANTY FOR THE RESIDENCE THAT COMPLIES
8 WITH SUBSECTION (1)(a) OF THIS SECTION, AND IF THE CLAIMANT
9 DISCOVERED OR SHOULD HAVE DISCOVERED THE ALLEGED DEFECT OR
10 DAMAGE WITHIN THE LONGEST APPLICABLE WARRANTY PERIOD, THE
11 CLAIMANT MUST BRING THE SUIT NOT LATER THAN SIX YEARS AFTER THE
12 SUBSTANTIAL COMPLETION OF THE IMPROVEMENT.

13 (II) IF THE DEFENDANT IS A CONSTRUCTION PROFESSIONAL WHO IS
14 AN ARCHITECT OR ENGINEER, AND THE CONSTRUCTION PROFESSIONAL
15 PERFORMED IN A MANNER CONSISTENT WITH THE DEGREE OF SKILL AND
16 CARE ORDINARILY EXERCISED BY MEMBERS OF THE SAME PROFESSION
17 CURRENTLY PRACTICING UNDER THE SAME OR SIMILAR CIRCUMSTANCES,
18 THE CLAIMANT MUST BRING THE SUIT NOT LATER THAN SIX YEARS AFTER
19 THE SUBSTANTIAL COMPLETION OF THE IMPROVEMENT.

20 (c) IF A CLAIM INVOLVES A DEFECT OR DAMAGE THAT IS COVERED
21 BY THE WARRANTY DESCRIBED IN SUBSECTION (7)(b) OF THIS SECTION,
22 THE CLAIMANT SHALL PURSUE ALL REMEDIES AVAILABLE UNDER THE
23 WARRANTY PROCESS BEFORE BRINGING AN ACTION FOR DAMAGES.

24 (d) SECTION 13-80-104 APPLIES TO THE LIMITATION OF CLAIMS IN
25 THIS SUBSECTION (7).

26 (8) (a) FOR HOUSING IN WHICH THE BUILDER IS A PARTICIPANT IN
27 THE PROGRAM, A CONSTRUCTION PROFESSIONAL WHO MAKES A

1 REASONABLE OFFER PURSUANT TO SECTION 13-20-803.5 MAY BE IMMUNE,
2 IN WHOLE OR IN PART, FROM AN OBLIGATION, DAMAGE, LOSS, OR LIABILITY
3 UNDER THIS PART 8 RELATED TO OR ARISING OUT OF THE CONSTRUCTION
4 DEFECT, BUT ONLY WITH RESPECT TO THE PORTION OF THE CLAIMANT'S
5 DAMAGES, IF ANY, THE CONSTRUCTION PROFESSIONAL CAN DEMONSTRATE
6 BY A PREPONDERANCE OF THE EVIDENCE WERE PROXIMATELY CAUSED OR
7 INCREASED BY AN AFFIRMATIVE DEFENSE SPECIFIED IN SUBSECTIONS (8)(b)
8 AND (8)(c) OF THIS SECTION AND NOT BY THE CONSTRUCTION DEFECT.

9 (b) IN ADDITION TO ANY OTHER AFFIRMATIVE DEFENSE AVAILABLE
10 UNDER ANY OTHER LAW, A CONSTRUCTION PROFESSIONAL IS NOT LIABLE
11 FOR A DAMAGE OR DEFECT TO THE EXTENT THE PROFESSIONAL CAN PROVE,
12 AS AN AFFIRMATIVE DEFENSE, THAT THE DAMAGE OR DEFECT WAS
13 CAUSED:

14 (I) BY A WEATHER CONDITION, EARTHQUAKE, OR HUMAN-CAUSED
15 EVENT, SUCH AS WAR, TERRORISM, OR VANDALISM, IN EXCESS OF THE
16 DESIGN CRITERIA EXPRESSED BY THE APPLICABLE BUILDING CODES,
17 REGULATIONS, AND ORDINANCES IN EFFECT AT THE TIME OF ORIGINAL
18 CONSTRUCTION;

19 (II) BY A HOMEOWNER'S UNREASONABLE FAILURE TO TIMELY
20 MITIGATE DAMAGES AS REQUIRED IN SECTION 13-20-803.5 (1);

21 (III) BY THE HOMEOWNER OR THE HOMEOWNER'S AGENT,
22 EMPLOYEE, OR CONSTRUCTION PROFESSIONAL BY VIRTUE OF THEIR
23 FAILURE TO FOLLOW THE BUILDER'S OR MANUFACTURER'S
24 RECOMMENDATIONS OR TO DO COMMONLY ACCEPTED HOMEOWNER
25 MAINTENANCE OBLIGATIONS. IN ORDER TO RELY UPON THIS DEFENSE AS
26 IT RELATES TO A CONSTRUCTION PROFESSIONAL'S RECOMMENDED
27 MAINTENANCE SCHEDULE, THE CONSTRUCTION PROFESSIONAL MUST SHOW

1 THAT THE HOMEOWNER HAD WRITTEN NOTICE OF THESE SCHEDULES AND
2 RECOMMENDATIONS AND THAT THE RECOMMENDATIONS AND SCHEDULES
3 WERE REASONABLE AT THE TIME THEY WERE ISSUED.

4 (IV) AFTER SALE OR TRANSFER OF OWNERSHIP TO THE CLAIMANT,
5 BY:

6 (A) THE HOMEOWNER'S OR HOMEOWNER'S AGENT'S ALTERATIONS;

7 (B) ORDINARY WEAR AND TEAR;

8 (C) MISUSE OF THE STRUCTURE OR COMPONENT;

9 (D) ABUSE OF THE STRUCTURE OR COMPONENT;

10 (E) NEGLIGENCE OF THE STRUCTURE OR COMPONENT; OR

11 (F) THE USE OF THE STRUCTURE OR COMPONENT FOR SOMETHING
12 OTHER THAN THE STRUCTURE'S OR COMPONENT'S INTENDED PURPOSE.

13 (c) A CONSTRUCTION PROFESSIONAL MAY ASSERT AN AFFIRMATIVE
14 DEFENSE TO THE EXTENT THAT:

15 (I) THE DAMAGE WAS CAUSED BY A PARTICULAR VIOLATION
16 COVERED BY A VALID RELEASE OBTAINED BY THE CONSTRUCTION
17 PROFESSIONAL, IF THE RELEASE IS ENFORCEABLE AGAINST THE CLAIMANT,
18 WAS EXECUTED WITH KNOWLEDGE OF THE PARTICULAR VIOLATION, AND
19 DOES NOT VIOLATE SECTION 13-20-806 (7); OR

20 (II) THE CONSTRUCTION PROFESSIONAL'S REPAIR COMPLETED
21 PURSUANT TO SECTION 13-20-803.5 (3) WAS SUCCESSFUL IN CORRECTING
22 THE PARTICULAR VIOLATION AND ANY DAMAGE RESULTING FROM THE
23 VIOLATION OF THE APPLICABLE STANDARD.

24 (9) NOTHING IN THIS SECTION:

25 (a) AFFECTS THE "COLORADO GOVERNMENTAL IMMUNITY ACT",
26 ARTICLE 10 OF TITLE 24; OR

27 (b) PROHIBITS, LIMITS, OR IMPAIRS A CONTRACTUAL CLAIM,

1 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM THAT IS NOT FOR
2 DAMAGES OR LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL
3 PROPERTY OR PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR
4 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY.

5 **SECTION 4.** In Colorado Revised Statutes, 13-20-803.5, **amend**
6 (1), (3), (7), and (12); and **add** (3.5), (3.7), (4.5), and (13) as follows:

7 **13-20-803.5. Notice of claim process - duty to mitigate.**

8 (1) (a) No later than seventy-five days before filing an action against a
9 construction professional, or no later than ninety days before filing the
10 action in the case of a commercial property, a claimant shall send or
11 deliver a written notice of claim to the construction professional by
12 certified mail, return receipt requested, or by personal service.

13 (b) BEFORE FILING A CLAIM PURSUANT TO THIS SUBSECTION (1)
14 FOR THE CONSTRUCTION OF HOUSING FOR WHICH A BUILDER WAS A
15 PARTICIPANT IN THE MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM,
16 A CLAIMANT SHALL MITIGATE THE DAMAGE CAUSED BY THE ALLEGED
17 CONSTRUCTION DEFECT. A CLAIMANT SATISFIES THE DUTY TO MITIGATE
18 BY TAKING REASONABLE ACTION TO PREVENT FURTHER DAMAGE FROM
19 THE CONSTRUCTION DEFECT. A CLAIMANT MUST CERTIFY IN THE
20 COMPLAINT THAT THE CLAIMANT HAS SATISFIED THE DUTY TO MITIGATE.

21 (c) IF THE CLAIMANT AND CONSTRUCTION PROFESSIONAL DISPUTE
22 WHETHER THE CLAIMANT HAS SATISFIED THE DUTY TO MITIGATE
23 DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION, THE CLAIMANT MAY
24 PROCEED WITH THE ACTION BUT DOES NOT RECOVER ANY DAMAGES THAT
25 THE CONSTRUCTION PROFESSIONAL PROVES WERE CAUSED BY THE
26 CLAIMANT'S UNREASONABLE FAILURE TO MITIGATE.

27 (d) A CLAIMANT DOES NOT BREACH THE DUTY TO MITIGATE IF THE

1 COST TO MITIGATE IS UNREASONABLE UNDER THE CIRCUMSTANCES OR WAS
2 BEYOND THE CLAIMANT'S FINANCIAL ABILITY TO PERFORM.

3 (3) (a) Within thirty days following the completion of the
4 inspection process conducted pursuant to subsection (2) of this section,
5 or within forty-five days following the completion of the inspection
6 process in the case of a commercial property, a construction professional
7 ~~may~~ SHALL send or deliver to the claimant, by certified mail, return
8 receipt requested, or BY personal service:

9 (I) An offer to settle the claim by:

10 (A) Payment of a sum certain; ~~or by~~

11 (B) Agreeing to remedy the claimed defect described in the notice
12 of claim; ■

13 (II) A WRITTEN RESPONSE THAT:

14 (A) IDENTIFIES THE STANDARDS THAT APPLY TO THE CLAIMED
15 DEFECT'S CONSTRUCTION OR PERFORMANCE; AND

16 (B) EXPLAINS WHY THE CLAIMED DEFECT DOES NOT REQUIRE
17 REPAIR; OR

18 (III) A WRITTEN RESPONSE THAT EXPLAINS THE CONSTRUCTION
19 PROFESSIONAL'S SCOPE OF WORK AND WHY THE CLAIMED DEFECT IS NOT
20 WITHIN THE WORK AND RESPONSIBILITY OF THE CONSTRUCTION
21 PROFESSIONAL.

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

1 (3.5) (a) BY THE EARLIER OF WHEN A CONSTRUCTION
2 PROFESSIONAL, OTHER THAN AN ARCHITECT OR ENGINEER, OFFERS TO
3 SETTLE A CLAIM AND OF SIXTY DAYS AFTER A CONSTRUCTION
4 PROFESSIONAL RECEIVES ACTUAL NOTICE OF CLAIM, THE CONSTRUCTION
5 PROFESSIONAL SHALL PROVIDE THE CLAIMANT WITH THE FOLLOWING
6 DOCUMENTS AND INFORMATION, TO THE EXTENT THE DOCUMENTS AND
7 INFORMATION ARE WITHIN THE CONSTRUCTION PROFESSIONAL'S
8 POSSESSION:

9 (I) COPIES OF ALL PLANS, SPECIFICATIONS, AND SOIL REPORTS
10 RELATED TO THE CLAIM;

11 (II) MAINTENANCE AND PREVENTIVE MAINTENANCE
12 RECOMMENDATIONS RELATED TO THE CLAIM;

13 (III) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF
14 EACH CONSTRUCTION PROFESSIONAL WHO CONTRACTED TO PERFORM
15 WORK OR PROVIDE SERVICES AND DID PERFORM WORK OR PROVIDE
16 SERVICES RELATED TO THE CLAIM;

17 (IV) ALL DOCUMENTS RELATED TO THE THIRD-PARTY INSPECTION
18 OF THE PROPERTY AND THE NAME AND LAST-KNOWN ADDRESS OF THE
19 INSPECTOR WHO PERFORMED THE THIRD-PARTY INSPECTION; AND

20 (V) COPIES OF EACH INSURANCE POLICY PURCHASED BY THE
21 CONSTRUCTION PROFESSIONAL THROUGH THE DATE OF THE NOTICE OF
22 CLAIM AND FROM THE EARLIER START DATE OF:

23 (A) THE DATE THE CONSTRUCTION OF THE ALLEGED DEFECT WAS
24 SUBSTANTIALLY COMPLETED; OR

25 (B) THE DATE THE CONSTRUCTION PROFESSIONAL SUBSTANTIALLY
26 COMPLETED WORK ON THE ALLEGED DEFECT.

27 (b) A CONSTRUCTION PROFESSIONAL MAY CHARGE REASONABLE

1 COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTIONS
2 (3.5)(a)(I), (3.5)(a)(II), (3.5)(a)(IV), AND (3.5)(a)(V) OF THIS SECTION.

3 (c) FAILURE TO PROVIDE THE IDENTIFYING INFORMATION
4 REQUIRED IN SUBSECTION (3.5)(a)(III) OF THIS SECTION BY THE
5 APPLICABLE DEADLINE FOR DESIGNATING A NONPARTY AT FAULT BARS THE
6 CONSTRUCTION PROFESSIONAL FROM DESIGNATING THE UNIDENTIFIED
7 CONSTRUCTION PROFESSIONAL AS A NONPARTY AT FAULT UNDER SECTION
8 13-21-111.5 (3)(b) IN A SUBSEQUENT ACTION. IF THE CONSTRUCTION
9 PROFESSIONAL FAILS TO PROVIDE THE INFORMATION REQUIRED IN
10 SUBSECTION (3.5)(a)(I) OF THIS SECTION, THE CLAIMANT NEED NOT
11 COMPLY WITH THE CERTIFICATE OF REVIEW REQUIREMENT IN SECTION
12 13-20-803.3 (2).

13 (3.7) (a) BY THE EARLIER OF WHEN A CONSTRUCTION
14 PROFESSIONAL WHO IS AN ARCHITECT OR ENGINEER OFFERS TO SETTLE A
15 CLAIM AND OF SIXTY DAYS AFTER A CONSTRUCTION PROFESSIONAL
16 RECEIVES ACTUAL NOTICE OF CLAIM, THE ARCHITECT OR ENGINEER SHALL
17 PROVIDE THE CLAIMANT WITH THE FOLLOWING DOCUMENTS AND
18 INFORMATION, TO THE EXTENT THE DOCUMENTS AND INFORMATION ARE
19 WITHIN THE ARCHITECT'S OR ENGINEER'S POSSESSION:

20 (I) COPIES OF ALL APPROVED CONSTRUCTION DOCUMENTS AND
21 SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION,
22 PREPARED BY THE ARCHITECT, ENGINEER, OR CONSULTANTS;

23 (II) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF
24 EACH ARCHITECT OR ENGINEER WHO PERFORMED WORK OR PROVIDED
25 SERVICES AS A CONSULTANT RELATED TO THE CLAIM AND ON THE
26 CLAIMANT'S PROPERTY; AND

27 (III) COPIES OF EACH INSURANCE POLICY PURCHASED BY THE

1 ARCHITECTS AND ENGINEERS THROUGH THE DATE OF THE NOTICE OF CLAIM
2 AND FROM THE EARLIER START DATE OF:

3 (A) THE DATE THE CONSTRUCTION OF THE ALLEGED DEFECT WAS
4 SUBSTANTIALLY COMPLETED; OR

5 (B) THE DATE THE ARCHITECTS AND ENGINEERS SUBSTANTIALLY
6 COMPLETED WORK RELATED TO THE ALLEGED DEFECT.

7 (b) AN ARCHITECT OR ENGINEER MAY CHARGE REASONABLE
8 COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTION (3.7)(a)
9 OF THIS SECTION.

10 (4.5) (a) WITHIN THIRTY DAYS AFTER THE REJECTION OF AN OFFER
11 MADE PURSUANT TO SUBSECTION (3) OF THIS SECTION, A CLAIMANT SHALL
12 PROVIDE A CONSTRUCTION PROFESSIONAL WITH A WRITTEN PROPOSAL TO
13 HAVE THE CONSTRUCTION DEFECT REPAIRED AT THE CONSTRUCTION
14 PROFESSIONAL'S EXPENSE OR TO SETTLE THE CLAIM.

15 (b) IF THE CONSTRUCTION PROFESSIONAL DOES NOT ACCEPT THE
16 PROPOSAL IN WRITING WITHIN FIFTEEN DAYS AFTER DELIVERY OF THE
17 PROPOSAL, THE PROPOSAL IS DEEMED TO HAVE BEEN REJECTED.

18 (c) IF THE CONSTRUCTION PROFESSIONAL ACCEPTS THE
19 CLAIMANT'S PROPOSAL, THE CONSTRUCTION PROFESSIONAL SHALL PAY THE
20 CLAIMANT'S REASONABLE ATTORNEY FEES AND COSTS INCURRED IN
21 INVESTIGATING THE DEFECT AND PROPOSING THE REPAIR.

22 (7) If an offer by a construction professional is made and accepted
23 OR IF A PROPOSAL MADE BY A CLAIMANT IS ACCEPTED, and if thereafter the
24 construction professional does not comply with ~~its~~ THE offer to remedy
25 or settle a claim for a construction defect OR WITH THE CLAIMANT'S
26 PROPOSAL, the claimant may file an action against the construction
27 professional for claims arising out of the defect or damage described in

1 the notice of claim without further notice.

2 (12) (a) Except as provided in THIS SECTION AND section
3 13-20-806, a claimant shall not recover more than actual damages in an
4 action.

5 (b) IF A CLAIMANT UNREASONABLY REJECTS A REASONABLE
6 WRITTEN OFFER OF SETTLEMENT MADE PURSUANT TO SUBSECTION (3) OF
7 THIS SECTION AND SUBSEQUENTLY COMMENCES AN ACTION AGAINST THE
8 CONSTRUCTION PROFESSIONAL, THE COURT MAY AWARD ATTORNEY FEES
9 AND COSTS TO THE CONSTRUCTION PROFESSIONAL.

10 (c) IF A CONSTRUCTION PROFESSIONAL FAILS TO MAKE A
11 REASONABLE WRITTEN OFFER OF SETTLEMENT PURSUANT TO SUBSECTION
12 (3) OF THIS SECTION, THE LIMITATIONS ON DAMAGES AND DEFENSES TO
13 LIABILITY PROVIDED IN SECTIONS 13-20-804 AND 13-20-806 DO NOT
14 APPLY AND THE COURT MAY AWARD ATTORNEY FEES AND COSTS TO THE
15 CLAIMANT.

16
17 (d) (I) A CONSTRUCTION PROFESSIONAL'S WRITTEN OFFER OF
18 SETTLEMENT IS REASONABLE, AND A CLAIMANT'S REJECTION OF THE OFFER
19 IS UNREASONABLE, IF THE CLAIMANT RECOVERS A FINAL JUDGMENT IN AN
20 AMOUNT THAT IS LESS THAN THE AMOUNT OFFERED OR THE REASONABLE
21 VALUE OF THE REPAIR OFFERED BY THE CONSTRUCTION PROFESSIONAL.

22 (II) A CONSTRUCTION PROFESSIONAL'S WRITTEN OFFER OF
23 SETTLEMENT IS UNREASONABLE, AND A CLAIMANT'S REJECTION OF THE
24 OFFER IS REASONABLE, IF THE CLAIMANT RECOVERS A FINAL JUDGMENT IN
25 AN AMOUNT THAT EXCEEDS THE AMOUNT OFFERED OR THE REASONABLE
26 VALUE OF THE REPAIR OFFERED BY THE CONSTRUCTION PROFESSIONAL.

27 (13) AN INSURER, AS DEFINED IN SECTION 10-1-102 (13) SHALL

1 NOT CANCEL OR DENY A LIABILITY INSURANCE POLICY ISSUED TO A
2 CONSTRUCTION PROFESSIONAL BASED ON THE CONSTRUCTION
3 PROFESSIONAL MAKING AN OFFER TO REPAIR OR SETTLE A CONSTRUCTION
4 DEFECT CLAIM PURSUANT TO THIS SECTION. ANY SETTLEMENT OR REPAIR
5 AGREEMENT THAT AFFECTS COVERAGE IS SUBJECT TO INSURER APPROVAL.

6 **SECTION 5.** In Colorado Revised Statutes, **amend** 13-20-805 as
7 follows:

8 **13-20-805. Tolling of statutes of limitation.** (1) If a notice of
9 claim is sent to a construction professional in accordance with section
10 13-20-803.5 within the time prescribed for the filing of an action under
11 ~~any~~ THE applicable statute of limitations or repose, then the statute of
12 limitations or repose is tolled until sixty days after the completion of the
13 notice of claim process described in section 13-20-803.5.

14 (2) IF AN ALLEGED CONSTRUCTION DEFECT IS BEING MITIGATED
15 PURSUANT TO SUBSECTION 13-20-803.5, THE STATUTE OF LIMITATIONS OR
16 REPOSE IS TOLLED FOR THE DURATION OF THE MITIGATION; EXCEPT THAT
17 THE MAXIMUM LENGTH OF TOLLING UNDER THIS SUBSECTION (2) CANNOT
18 EXCEED ONE YEAR.

19 (3) THE TOLLING OF THE STATUTE OF LIMITATIONS UNDER
20 SUBSECTION (1) OR (2) OF THIS SECTION DOES NOT PRECLUDE THE TOLLING
21 OF THE STATUTE OF LIMITATIONS OR REPOSE UNDER THE OTHER
22 SUBSECTION OF THIS SECTION.

23

24 **SECTION 6.** In Colorado Revised Statutes, 38-33.3-303.5,
25 **amend** (1)(d)(I)(A) and (1)(d)(III) introductory portion; and **add** (5) as
26 follows:

27 **38-33.3-303.5. Construction defect actions - disclosure -**

1 **approval by unit owners - definitions - exemptions.** (1) (d) **Approval**
2 **by unit owners - procedures.** (I) (A) Notwithstanding any provision of
3 law or any requirement in the governing documents, the executive board
4 ~~may~~ HAS THE RIGHT TO initiate ~~the~~ A construction defect action ~~only~~ if
5 authorized within the voting period by owners of units to which a
6 ~~majority~~ AT LEAST SIXTY-FIVE PERCENT of votes in the association are
7 allocated. ~~Such~~ THE approval is not required for an association to proceed
8 with a construction defect action if the alleged construction defect
9 pertains to a facility that is intended and used for nonresidential purposes
10 and if the cost to repair the alleged defect does not exceed fifty thousand
11 dollars. ~~Such~~ THE approval is not required for an association to proceed
12 with a construction defect action when the association is the contracting
13 party for the performance of labor or purchase of services or materials.

14 (III) **Vote count - exclusions.** For purposes of calculating the
15 required ~~majority~~ vote under this subsection (1)(d) only, the following
16 votes are excluded:

17 (5) AN EXECUTIVE BOARD THAT IS SUCCESSFUL UNDER A
18 CONSTRUCTION DEFECT CLAIM SHALL FIRST USE MONETARY DAMAGES
19 RECEIVED PURSUANT TO THE CLAIM TO REPAIR THE CONSTRUCTION
20 DEFECT.

21 **SECTION 7. Act subject to petition - effective date -**
22 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
23 the expiration of the ninety-day period after final adjournment of the
24 general assembly; except that, if a referendum petition is filed pursuant
25 to section 1 (3) of article V of the state constitution against this act or an
26 item, section, or part of this act within such period, then the act, item,
27 section, or part will not take effect unless approved by the people at the

1 general election to be held in November 2026 and, in such case, will take
2 effect on the date of the official declaration of the vote thereon by the
3 governor.

4 (2) This act applies to construction defect claims brought on or
5 after the applicable effective date of this act.