

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

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

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.**

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**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.*

SENATE  
Amended 2nd Reading  
April 10, 2024

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.

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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 are increasing for all types  
22          of home construction, the cost increases associated with condominium  
23          construction have outpaced those associated with single-family home  
24          construction, and this is particularly evident as it relates to the cost for  
25          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;

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 (o) Building codes are adopted to establish minimum requirements  
12 to safeguard the public safety, health, and general welfare and to provide  
13 safety to firefighters and emergency responders during emergency  
14 operations;

15 (p) The construction of affordable housing will only create  
16 financial stability, economic mobility, and intergenerational wealth if the  
17 buyers of affordable housing are not unfairly burdened with the cost to  
18 repair construction defects caused by builder negligence; and

19 (q) Homeowners who are prevented from pursuing legal remedies  
20 for construction defects may be prevented from refinancing or selling  
21 their homes and may be subjected to financial insecurity, bankruptcy, or  
22 foreclosure.

23 (2) The general assembly declares that this act:

24 (a) Is intended to protect homeowner rights to seek redress for  
25 construction defects and to be able to pursue the most efficient and  
26 cost-effective dispute resolution process to be made whole; and

27 (b) Is not intended to be interpreted in a manner that would have

1 the effect of lowering the quality of construction in the state of Colorado  
2 or encouraging builders to ignore building codes.

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

6 SECTION 2. In Colorado Revised Statutes, 38-33.3-303.5,  
7 amend (1)(d)(I)(A) and (1)(d)(III) introductory portion as follows:

8 38-33.3-303.5. Construction defect actions - disclosure -  
9 approval by unit owners - definitions - exemptions. (1) (d) Approval  
10 by unit owners - procedures. (I) (A) Notwithstanding any provision of  
11 law or any requirement in the governing documents, the executive board  
12 may HAS THE RIGHT TO initiate the construction defect action only if  
13 authorized within the voting period by owners of units to which a  
14 majority of AT LEAST SIXTY PERCENT OF THE votes in the association are  
15 allocated. Such A UNIT OWNER VOTING IN FAVOR OF PROCEEDING WITH A  
16 CONSTRUCTION DEFECT ACTION MUST ALSO ACKNOWLEDGE IN WRITING  
17 THAT THE UNIT OWNER HAS RECEIVED THE DISCLOSURES REQUIRED UNDER  
18 SECTION 38-33.3-303.5 (1)(c) AND THAT THE UNIT OWNER HAS BEEN  
19 INFORMED OF THE UNIT OWNER'S OBLIGATION UNDER COLORADO LAW TO  
20 DISCLOSE KNOWN DEFECTS UPON SALE OF THE PROPERTY. The approval  
21 is not required for an association to proceed with a construction defect  
22 action if the alleged construction defect pertains ONLY to a facility that is  
23 intended and used for nonresidential purposes and if the cost to repair the  
24 alleged defect does not exceed fifty thousand dollars. Such THE approval  
25 is not required for an association to proceed with a construction defect  
26 action when the association is the DIRECT contracting party for the  
27 performance of labor or purchase of services or materials.

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

4            **SECTION 3.** In Colorado Revised Statutes, 13-20-804, **amend**  
5 **(1); repeal (2); and add (1)(e) and (3) as follows:**

6            **13-20-804. Restriction on construction defect negligence**  
7 **claims.** (1) ~~No negligence claim seeking damages for a construction~~  
8 ~~defect may be asserted in~~ A CLAIMANT IS BARRED FROM BRINGING OR  
9 MAINTAINING A CLAIM SEEKING DAMAGES FOR A CONSTRUCTION DEFECT  
10 AS an action if ~~such~~ THE claim arises from the failure to construct an  
11 improvement to real property in substantial compliance with an applicable  
12 building code or industry standard; except that ~~such~~ THE claim may be  
13 asserted if ~~such~~ THE failure results in CAUSES one or more of the  
14 following:

- 15            (a) Actual damage to real or personal property;
- 16            (b) Actual loss of the use of real or personal property;
- 17            (c) Bodily injury or wrongful death; ~~or~~
- 18            (d) ~~A risk of bodily injury or death to, or a threat to the life,~~  
19 ~~health, or safety of,~~ VERIFIABLE DANGER TO the occupants of the  
20 residential real property; OR
- 21            (e) AN ACTUAL FAILURE OR LACK OF CAPACITY OF A BUILDING  
22 COMPONENT TO PERFORM THE INTENDED FUNCTION OR PURPOSE OF THE  
23 BUILDING COMPONENT.

24            (2) ~~Nothing in this section shall be construed to prohibit, limit, or~~  
25 ~~impair the following:~~

- 26            (a) ~~The assertion of tort claims other than claims for negligence;~~
- 27            (b) ~~The assertion of contract or warranty claims; or~~

1           ~~(c) The assertion of claims that arise from the violation of any~~  
2           ~~statute or ordinance other than claims for violation of a building code.~~

3           ~~(3) THIS SECTION DOES NOT PROHIBIT, LIMIT, OR IMPAIR CLAIMS,~~  
4           ~~INCLUDING EXPRESS CONTRACT CLAIMS, THAT ARE NOT BASED UPON~~  
5           ~~VIOLATIONS OF AN APPLICABLE BUILDING CODE, MANUFACTURER'S~~  
6           ~~INSTRUCTIONS, OR INDUSTRY STANDARD.~~

7           ~~SECTION 4. In Colorado Revised Statutes, 38-33.3-302, add~~  
8           ~~(3)(c) as follows:~~

9           ~~**38-33.3-302. Powers of unit owners' association.** (3) (c) (I) IF~~  
10           ~~AN ASSOCIATION TAKES AN ACTION UNDER SUBSECTION (1)(d) OF THIS~~  
11           ~~SECTION FOR A CONSTRUCTION DEFECT ON BEHALF OF TWO OR MORE UNIT~~  
12           ~~OWNERS, EACH CLAIM BROUGHT ON BEHALF OF A UNIT OWNER IS SUBJECT~~  
13           ~~TO EACH DEFENSE THAT THE UNIT OWNER WOULD BE SUBJECT TO IF THE~~  
14           ~~UNIT OWNER HAD BROUGHT THE CLAIM.~~

15           ~~(II) THIS SUBSECTION (3)(c) DOES NOT PROHIBIT AN ASSOCIATION~~  
16           ~~FROM ASSERTING CLAIMS ON BEHALF OF TWO OR MORE UNIT OWNERS~~  
17           ~~THROUGH A SINGLE ACTION.~~

18           ~~**SECTION 5. Act subject to petition - effective date -**~~  
19           ~~**applicability.** (1) This act takes effect at 12:01 a.m. on the day following~~  
20           ~~the expiration of the ninety-day period after final adjournment of the~~  
21           ~~general assembly; except that, if a referendum petition is filed pursuant~~  
22           ~~to section 1 (3) of article V of the state constitution against this act or an~~  
23           ~~item, section, or part of this act within such period, then the act, item,~~  
24           ~~section, or part will not take effect unless approved by the people at the~~  
25           ~~general election to be held in November 2024 and, in such case, will take~~  
26           ~~effect on the date of the official declaration of the vote thereon by the~~  
27           ~~governor.~~



- 1            (2) This act applies to civil actions occurring and notices of claims
- 2            received on or after the applicable effective date of this act.