

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

**REVISED**

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

LLS NO. 17-0969.01 Duane Gall x4335

**HOUSE BILL 17-1279**

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**HOUSE SPONSORSHIP**

**Garnett and Saine,** Wist, Duran

**SENATE SPONSORSHIP**

**Tate and Guzman,** Williams A., Hill

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**House Committees**

State, Veterans, & Military Affairs

**Senate Committees**

Business, Labor, & Technology

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**A BILL FOR AN ACT**

101      **CONCERNING THE REQUIREMENT THAT A UNIT OWNERS' ASSOCIATION**  
102                    **OBTAIN APPROVAL THROUGH A VOTE OF UNIT OWNERS BEFORE**  
103                    **FILING A CONSTRUCTION DEFECT ACTION.**

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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>.)*

The bill requires that, before the executive board of a unit owners' association (HOA) in a common interest community brings suit against a developer or builder on behalf of unit owners, the board must:

!      Notify all unit owners and the developer or builder against whom the lawsuit is being considered;

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

SENATE  
2nd Reading Unamended  
May 3, 2017

HOUSE  
3rd Reading Unamended  
April 24, 2017

HOUSE  
Amended 2nd Reading  
April 21, 2017

- ! Call a meeting at which the executive board and the developer or builder will have an opportunity to present relevant facts and arguments; and
- ! Obtain the approval of a majority of the unit owners after giving them detailed disclosures about the lawsuit and its potential costs and benefits.

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

2           **SECTION 1.** In Colorado Revised Statutes, 38-33.3-303.5,  
3 **amend** (1); **repeal** (2); and **add** (4) as follows:

4           **38-33.3-303.5. Construction defect actions - disclosure -**  
5 **approval by unit owners - definitions - exemptions.** (1) (a) ~~In the event~~  
6 ~~BEFORE~~ the executive board, pursuant to section 38-33.3-302 (1)(d),  
7 institutes ~~an~~ A CONSTRUCTION DEFECT action, ~~asserting defects in the~~  
8 ~~construction of five or more units, the provisions of this section shall~~  
9 ~~apply. For purposes of this section, "action" shall have the same meaning~~  
10 ~~as set forth in section 13-20-803 (1), C.R.S.~~

11           ~~(b)~~ the executive board shall ~~substantially~~ comply with ~~the~~  
12 ~~provisions of this section.~~

13           (b) FOR THE PURPOSES OF THIS SECTION ONLY:

14           (I) "CONSTRUCTION DEFECT ACTION":

15           (A) MEANS ANY CIVIL ACTION OR ARBITRATION PROCEEDING FOR  
16 DAMAGES, INDEMNITY, SUBROGATION, OR CONTRIBUTION BROUGHT  
17 AGAINST A CONSTRUCTION PROFESSIONAL TO ASSERT A CLAIM,  
18 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM FOR DAMAGES OR  
19 LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL PROPERTY OR  
20 PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR CONSTRUCTION  
21 OF AN IMPROVEMENT TO REAL PROPERTY, REGARDLESS OF THE THEORY OF  
22 LIABILITY; AND

1 (B) INCLUDES ANY RELATED, ANCILLARY, OR DERIVATIVE CLAIM,  
2 AND ANY CLAIM FOR BREACH OF FIDUCIARY DUTY OR AN ACT OR OMISSION  
3 OF A MEMBER OF AN ASSOCIATION'S EXECUTIVE BOARD, THAT ARISES  
4 FROM AN ALLEGED CONSTRUCTION DEFECT OR THAT SEEKS THE SAME OR  
5 SIMILAR DAMAGES.

6 (II) "CONSTRUCTION PROFESSIONAL" HAS THE MEANING SET FORTH  
7 IN SECTION 13-20-802.5 (4).

8 (c) **Meeting to consider commencement of construction defect**  
9 **action - disclosures - required terms.** (I) THE EXECUTIVE BOARD SHALL  
10 MAIL OR DELIVER WRITTEN NOTICE OF THE ANTICIPATED COMMENCEMENT  
11 OF THE CONSTRUCTION DEFECT ACTION TO EACH UNIT OWNER AT THE  
12 OWNER'S LAST-KNOWN ADDRESS DESCRIBED IN THE ASSOCIATION'S  
13 RECORDS AND TO THE LAST-KNOWN ADDRESS OF EACH CONSTRUCTION  
14 PROFESSIONAL AGAINST WHOM A CONSTRUCTION DEFECT ACTION IS  
15 PROPOSED; EXCEPT THAT THIS NOTICE REQUIREMENT DOES NOT APPLY TO:

16 (A) CONSTRUCTION PROFESSIONALS IDENTIFIED AFTER THE NOTICE  
17 IS MAILED; OR

18 (B) JOINED PARTIES IN A CONSTRUCTION DEFECT ACTION  
19 PREVIOUSLY APPROVED BY OWNERS PURSUANT TO SUBSECTION (1)(d) OF  
20 THIS SECTION.

21 (II) THE NOTICE GIVEN PURSUANT TO THIS SUBSECTION (1)(c)  
22 MUST CALL A MEETING OF THE UNIT OWNERS, WHICH MUST BE HELD NO  
23 LESS THAN TEN DAYS AND NO MORE THAN FIFTEEN DAYS AFTER THE  
24 MAILING DATE OF THE NOTICE, TO CONSIDER WHETHER TO BRING A  
25 CONSTRUCTION DEFECT ACTION. A FAILURE TO HOLD THE MEETING WITHIN  
26 THIS TIME PERIOD VOIDS THE SUBSEQUENT VOTE. A QUORUM IS NOT  
27 REQUIRED AT THE MEETING. IN NO EVENT SHALL THE TIME PERIOD FOR

1 PROVIDING THE NOTICE REQUIRED PURSUANT TO SUBSECTION (1)(c)(I) OF  
2 THIS SECTION, HOLDING THE MEETING REQUIRED PURSUANT TO THIS  
3 SUBSECTION (1)(c)(II), AND VOTING AS REQUIRED BY SUBSECTION (1)(d)  
4 OF THIS SECTION EXCEED NINETY DAYS. THE NOTICE MUST STATE THAT:

5 (A) THE CONCLUSION OF THE MEETING INITIATES THE VOTING  
6 PERIOD, DURING WHICH THE ASSOCIATION WILL ACCEPT VOTES FOR AND  
7 AGAINST PROCEEDING WITH THE CONSTRUCTION DEFECT ACTION. ■ ■

8 THE DISCLOSURE AND VOTING PERIOD SHALL END NINETY DAYS AFTER THE  
9 MAILING DATE OF THE MEETING NOTICE OR WHEN THE ASSOCIATION  
10 DETERMINES THAT THE CONSTRUCTION DEFECT ACTION IS EITHER  
11 APPROVED OR DISAPPROVED, WHICHEVER OCCURS FIRST.

12 (B) THE CONSTRUCTION PROFESSIONAL AGAINST WHOM THE  
13 CONSTRUCTION DEFECT ACTION IS PROPOSED WILL BE INVITED TO ATTEND  
14 AND WILL HAVE AN OPPORTUNITY TO ADDRESS THE UNIT OWNERS  
15 CONCERNING THE ALLEGED CONSTRUCTION DEFECT; AND

16 (C) THE PRESENTATION AT THE MEETING BY THE CONSTRUCTION  
17 PROFESSIONAL OR THE CONSTRUCTION PROFESSIONAL'S DESIGNEE OR  
18 DESIGNEES MAY, BUT IS NOT REQUIRED TO, INCLUDE AN OFFER TO REMEDY  
19 ANY DEFECT IN ACCORDANCE WITH SECTION 13-20-803.5 (3) OF THE  
20 "CONSTRUCTION DEFECT ACTION REFORM ACT".

21 (III) THE NOTICE GIVEN PURSUANT TO THIS SUBSECTION (1)(c)  
22 MUST ALSO CONTAIN A ■ DESCRIPTION OF THE NATURE OF THE  
23 CONSTRUCTION DEFECT ACTION, WHICH DESCRIPTION IDENTIFIES ALLEGED  
24 DEFECTS WITH REASONABLE SPECIFICITY, THE RELIEF SOUGHT, A  
25 GOOD-FAITH ESTIMATE OF THE BENEFITS AND RISKS INVOLVED, AND ANY  
26 OTHER PERTINENT INFORMATION. THE NOTICE SHALL ALSO INCLUDE THE  
27 FOLLOWING DISCLOSURES:

1           1. THE ALLEGED CONSTRUCTION DEFECTS MIGHT  
2 RESULT IN INCREASED COSTS TO THE ASSOCIATION IN  
3 MAINTENANCE OR REPAIR OR CAUSE AN INCREASE IN  
4 ASSESSMENTS OR SPECIAL ASSESSMENTS TO COVER THE  
5 COST OF REPAIRS.

6           2. IF THE ASSOCIATION DOES NOT FILE A CLAIM  
7 BEFORE THE APPLICABLE LEGAL DEADLINES, THE CLAIM  
8 WILL EXPIRE.

9           3. UNTIL THE ALLEGED DEFECTS ARE REPAIRED,  
10 SELLERS OF UNITS WITHIN THE COMMON INTEREST  
11 COMMUNITY MIGHT OWE UNIT BUYERS A DUTY TO DISCLOSE  
12 KNOWN DEFECTS.

13           4. THE EXECUTIVE BOARD (INTENDS TO ENTER) (HAS  
14 ENTERED) INTO A FEE ARRANGEMENT WITH THE ATTORNEYS  
15 REPRESENTING THE ASSOCIATION, UNDER WHICH (THE  
16 ATTORNEYS WILL BE PAID A CONTINGENCY FEE EQUAL TO  
17 \_\_\_\_\_ PERCENT OF THE (NET) (GROSS) RECOVERY OF THE  
18 AMOUNT THE ASSOCIATION RECOVERS FROM THE  
19 DEFENDANT(S)) (THE ASSOCIATION'S ATTORNEYS WILL BE  
20 PAID (AN HOURLY FEE OF \$ \_\_\_\_\_) (A FIXED FEE OF  
21 \$ \_\_\_\_\_)).

22           5. IN ADDITION TO ATTORNEY FEES, THE  
23 ASSOCIATION MAY INCUR UP TO \$ \_\_\_\_\_ FOR LEGAL  
24 COSTS, INCLUDING EXPERT WITNESSES, DEPOSITIONS, AND  
25 FILING FEES. THE AMOUNT WILL NOT BE EXCEEDED  
26 WITHOUT THE EXECUTIVE BOARD'S FURTHER WRITTEN  
27 AUTHORITY. IF THE ASSOCIATION DOES NOT PREVAIL ON ITS

1 CLAIM, THE ASSOCIATION MAY BE RESPONSIBLE FOR PAYING  
2 THESE LEGAL EXPENSES.

3 6. IF THE ASSOCIATION DOES NOT PREVAIL ON ITS  
4 CLAIM, THE ASSOCIATION MAY BE RESPONSIBLE FOR PAYING  
5 ITS ATTORNEY FEES.

6 7. IF THE ASSOCIATION DOES NOT PREVAIL ON ITS  
7 CLAIM, A COURT OR ARBITRATOR SOMETIMES AWARDS  
8 COSTS AND ATTORNEY FEES TO THE OPPOSING PARTY.  
9 SHOULD THAT HAPPEN IN THIS CASE, THE ASSOCIATION MAY  
10 BE RESPONSIBLE FOR PAYING THE OPPOSING PARTY'S COSTS  
11 AND FEES AS A RESULT OF SUCH AWARD.

12 8. THERE IS NO GUARANTEE THAT THE ASSOCIATION  
13 WILL RECOVER ENOUGH FUNDS TO REPAIR THE CLAIMED  
14 CONSTRUCTION DEFECT(S). IF THE CLAIMED DEFECTS ARE  
15 NOT REPAIRED, ADDITIONAL DAMAGE TO PROPERTY AND A  
16 REDUCTION IN THE USEFUL LIFE OF THE COMMON ELEMENTS  
17 MIGHT OCCUR.

18 9. UNTIL THE CLAIMED CONSTRUCTION DEFECTS ARE  
19 REPAIRED, OR UNTIL THE CONSTRUCTION DEFECT CLAIM IS  
20 CONCLUDED, THE MARKET VALUE OF THE UNITS IN THE  
21 ASSOCIATION MIGHT BE ADVERSELY AFFECTED.

22 10. UNTIL THE CLAIMED CONSTRUCTION DEFECT(S)  
23 ARE REPAIRED, OR UNTIL THE CONSTRUCTION DEFECT(S)  
24 CLAIM IS CONCLUDED, OWNERS IN THE ASSOCIATION MIGHT  
25 HAVE DIFFICULTY REFINANCING AND PROSPECTIVE BUYERS  
26 MIGHT HAVE DIFFICULTY OBTAINING FINANCING. IN  
27 ADDITION, CERTAIN FEDERAL UNDERWRITING STANDARDS

1 OR REGULATIONS PREVENT REFINANCING OR OBTAINING A  
2 NEW LOAN IN PROJECTS WHERE A CONSTRUCTION DEFECT IS  
3 CLAIMED, AND CERTAIN LENDERS AS A MATTER OF POLICY  
4 WILL NOT REFINANCE OR PROVIDE A NEW LOAN IN PROJECTS  
5 WHERE A CONSTRUCTION DEFECT IS CLAIMED.

6 (IV) THE ASSOCIATION SHALL MAINTAIN A VERIFIED OWNER  
7 MAILING LIST THAT IDENTIFIES THE OWNERS TO WHOM THE ASSOCIATION  
8 MAILED THE NOTICE REQUIRED PURSUANT TO THIS SUBSECTION (1)(c). THE  
9 VERIFIED OWNER MAILING LIST SHALL INCLUDE, FOR EACH OWNER, THE  
10 ADDRESS, IF ANY, TO WHICH THE ASSOCIATION MAILED THE NOTICE  
11 REQUIRED PURSUANT TO THIS SUBSECTION (1)(c). THE ASSOCIATION SHALL  
12 PROVIDE A COPY OF THE VERIFIED OWNER MAILING LIST TO EACH  
13 CONSTRUCTION PROFESSIONAL WHO IS SENT A NOTICE PURSUANT TO THIS  
14 SUBSECTION (1)(c) AT THE OWNER MEETING REQUIRED UNDER SUBSECTION  
15 (1)(c)(II) OF THIS SECTION. THE OWNER MAILING LIST SHALL BE DEEMED  
16 VERIFIED IF A SPECIMEN COPY OF THE MAILING LIST IS CERTIFIED BY AN  
17 ASSOCIATION OFFICER OR AGENT. IF THE ASSOCIATION COMMENCES A  
18 CONSTRUCTION DEFECT ACTION AGAINST ANY CONSTRUCTION  
19 PROFESSIONAL, THE ASSOCIATION SHALL FILE ITS VERIFIED OWNER  
20 MAILING LIST AND RECORDS OF VOTES RECEIVED FROM OWNERS DURING  
21 THE VOTING PERIOD WITH THE APPROPRIATE FORUM UNDER SEAL.

22 (V) THE SUBSTANCE OF A PROPOSED CONSTRUCTION DEFECT  
23 ACTION MAY BE AMENDED OR SUPPLEMENTED AFTER THE MEETING, BUT  
24 AN AMENDED OR SUPPLEMENTED CLAIM DOES NOT EXTEND THE VOTING  
25 PERIOD. THE EXECUTIVE BOARD SHALL GIVE NOTICE TO UNIT OWNERS OF  
26 ANY AMENDED OR SUPPLEMENTED CLAIM AND SHALL MAINTAIN RECORDS  
27 OF ITS COMMUNICATIONS WITH UNIT OWNERS. OWNER APPROVAL

1 PURSUANT TO SUBSECTION (1)(d) OF THIS SECTION IS NOT REQUIRED FOR  
2 AMENDMENTS OR SUPPLEMENTS TO A CONSTRUCTION DEFECT ACTION  
3 MADE AFTER THE NOTICE PURSUANT TO THIS SUBSECTION (1)(c) IS SENT.

4 (d) **Approval by unit owners - procedures.**

5 (I) (A) NOTWITHSTANDING ANY PROVISION OF LAW OR ANY  
6 REQUIREMENT IN THE GOVERNING DOCUMENTS, THE EXECUTIVE BOARD  
7 MAY INITIATE THE CONSTRUCTION DEFECT ACTION ONLY IF AUTHORIZED  
8 WITHIN THE VOTING PERIOD BY OWNERS OF UNITS TO WHICH A MAJORITY  
9 OF VOTES IN THE ASSOCIATION ARE ALLOCATED. SUCH APPROVAL IS NOT  
10 REQUIRED FOR AN ASSOCIATION TO PROCEED WITH A CONSTRUCTION  
11 DEFECT ACTION IF THE ALLEGED CONSTRUCTION DEFECT PERTAINS TO A  
12 FACILITY THAT IS INTENDED AND USED FOR NONRESIDENTIAL PURPOSES  
13 AND IF THE COST TO REPAIR THE ALLEGED DEFECT DOES NOT EXCEED FIFTY  
14 THOUSAND DOLLARS. SUCH APPROVAL IS NOT REQUIRED FOR AN  
15 ASSOCIATION TO PROCEED WITH A CONSTRUCTION DEFECT ACTION WHEN  
16 THE ASSOCIATION IS THE CONTRACTING PARTY FOR THE PERFORMANCE OF  
17 LABOR OR PURCHASE OF SERVICES OR MATERIALS.

18 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN  
19 OWNER'S VOTE SHALL BE SUBMITTED ONLY ONCE AND MAY BE OBTAINED  
20 IN ANY WRITTEN FORMAT CONFIRMING THE OWNER'S VOTE TO APPROVE OR  
21 REJECT THE PROPOSED CONSTRUCTION DEFECT ACTION. THE ASSOCIATION  
22 SHALL MAINTAIN A RECORD OF ALL VOTES UNTIL THE CONCLUSION OF THE  
23 CONSTRUCTION DEFECT ACTION, INCLUDING ALL APPEALS, IF ANY.

24 (II) (A) NOTHING IN THIS SECTION ALTERS THE TOLLING  
25 PROVISIONS OF SECTION 13-20-805.

26 (B) ALL STATUTES OF LIMITATION AND REPOSE APPLICABLE TO  
27 CLAIMS BASED ON DEFECTS DESCRIBED WITH REASONABLE SPECIFICITY IN



1 THE NOTICE, WHICH MAY BE SUPPLEMENTED OR AMENDED PURSUANT TO  
2 SUBSECTION (1)(c)(IV) OF THIS SECTION, ARE TOLLED FROM THE DATE THE  
3 NOTICE SENT PURSUANT TO SUBSECTION (1)(c) OF THIS SECTION IS MAILED  
4 UNTIL EITHER THE NINETY-DAY VOTING AND DISCLOSURE PERIOD ENDS OR  
5 UNTIL THE ASSOCIATION DETERMINES THAT THE CONSTRUCTION DEFECT  
6 ACTION IS EITHER APPROVED OR DISAPPROVED, WHICHEVER OCCURS FIRST.

7 (C) THE APPLICABLE STATUTES OF LIMITATION AND REPOSE THAT  
8 APPLY TO CLAIMS BASED ON A DEFECT DESCRIBED IN THE NOTICE WITH  
9 REASONABLE SPECIFICITY ARE TOLLED PURSUANT TO THIS SUBSECTION  
10 (1)(d)(II) ONCE, AND MAY NOT EXTEND THE STATUTES OF LIMITATION AND  
11 REPOSE THAT APPLY TO CLAIMS BASED ON THAT DEFECT FOR MORE THAN  
12 A TOTAL OF NINETY DAYS, RESPECTIVELY. IF A DEFECT NOT INCLUDED IN  
13 THE NOTICE SENT PURSUANT TO SUBSECTION (1)(c) OF THIS SECTION IS THE  
14 SUBJECT OF A LATER VOTE, TOLLING PURSUANT TO THIS SUBSECTION (1)(d)  
15 APPLIES UNLESS THE CLAIM BASED ON THAT DEFECT IS OTHERWISE BARRED  
16 BY THE STATUTE OF LIMITATIONS OR STATUTE OF REPOSE.

17 (III) **Vote count - exclusions.** FOR PURPOSES OF CALCULATING  
18 THE REQUIRED MAJORITY VOTE UNDER THIS SUBSECTION (1)(d) ONLY, THE  
19 FOLLOWING VOTES ARE EXCLUDED:

20 (A) ANY VOTES ALLOCATED TO UNITS OWNED BY A DEVELOPMENT  
21 PARTY. AS USED IN THIS SUBSECTION (1)(d)(III)(A), "DEVELOPMENT  
22 PARTY" MEANS A CONTRACTOR, SUBCONTRACTOR, DEVELOPER, OR  
23 BUILDER RESPONSIBLE FOR ANY PART OF THE DESIGN, CONSTRUCTION, OR  
24 REPAIR OF ANY PORTION OF THE COMMON INTEREST COMMUNITY AND ANY  
25 OF THAT PARTY'S AFFILIATES; AND "AFFILIATE" INCLUDES AN ENTITY  
26 CONTROLLED OR OWNED, IN WHOLE OR IN PART, BY ANY PERSON THAT  
27 CONTROLS OR OWNS A DEVELOPMENT PARTY OR BY THE SPOUSE OF A

1     DEVELOPMENT PARTY.

2           (B) ANY VOTES ALLOCATED TO UNITS OWNED BY BANKING  
3     INSTITUTIONS, UNLESS A VOTE FROM SUCH AN INSTITUTION IS ACTUALLY  
4     RECEIVED BY THE ASSOCIATION;

5           (C) ANY VOTES ALLOCATED TO UNITS OF A PRODUCT TYPE IN  
6     WHICH NO DEFECTS ARE ALLEGED, IN A COMMON INTEREST COMMUNITY  
7     WHOSE DECLARATION PROVIDES THAT COMMON EXPENSE LIABILITIES ARE  
8     NOT SHARED BETWEEN THE PRODUCT TYPES.

9           (D) ANY VOTES ALLOCATED TO UNITS OWNED BY OWNERS WHO  
10    ARE DEEMED NONRESPONSIVE. IF THE STATUS OF THE NONRESPONSIVE  
11    UNIT OWNERS IS CHALLENGED IN COURT, THE COURT SHALL CONSIDER  
12    WHETHER THE EXECUTIVE BOARD HAS MADE DILIGENT EFFORTS TO  
13    CONTACT THE UNIT OWNER REGARDING THE VOTE AND MAY CONSIDER:  
14    WHETHER A MAILING WAS RETURNED AS UNDELIVERABLE; WHETHER THE  
15    OWNER APPEARS TO BE RESIDING AT THE UNIT; AND WHETHER THE  
16    ASSOCIATION HAS USED OTHER CONTACT INFORMATION, SUCH AS AN  
17    ELECTRONIC MAIL ADDRESS OR TELEPHONE NUMBER FOR THE OWNER.

18           (e) **Notice to construction professional.** AT LEAST FIVE  
19    BUSINESS DAYS BEFORE THE MAILING OF THE NOTICE REQUIRED BY  
20    SUBSECTION (1)(c) OF THIS SECTION, THE ASSOCIATION SHALL NOTIFY  
21    EACH CONSTRUCTION PROFESSIONAL AGAINST WHOM A CONSTRUCTION  
22    DEFECT ACTION IS PROPOSED BY MAIL, AT ITS LAST-KNOWN ADDRESS, OF  
23    THE DATE AND TIME OF THE MEETING CALLED TO CONSIDER THE  
24    CONSTRUCTION DEFECT ACTION PURSUANT TO SUBSECTION (1)(c) OF THIS  
25    SECTION.

26           ~~(2) (a) Prior to the service of the summons and complaint on any~~  
27    ~~defendant with respect to an action governed by this section, the~~

1 executive board shall mail or deliver written notice of the commencement  
2 or anticipated commencement of such action to each unit owner at the last  
3 known address described in the association's records.


4 (b) ~~The notice required by paragraph (a) of this subsection (2)~~  
5 ~~shall state a general description of the following:~~

6 (I) ~~The nature of the action and the relief sought; and~~

7 (II) ~~The expenses and fees that the executive board anticipates~~  
8 ~~will be incurred in prosecuting the action.~~

9 (4) **Provisions not severable.** NOTWITHSTANDING SECTION  
10 2-4-204, THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES  
11 THAT IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY  
12 PERSON OR CIRCUMSTANCE IS HELD INVALID, THE ENTIRE SECTION SHALL  
13 BE DEEMED INVALID.

14 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-117, **add**  
15 (1.9) as follows:

16   
17 **38-33.3-117. Applicability to preexisting common interest**  
18 **communities.** (1.9) NOTWITHSTANDING ANY OTHER PROVISION OF LAW,  
19 SECTION 38-33.3-303.5 APPLIES TO ALL COMMON INTEREST COMMUNITIES  
20 CREATED WITHIN THIS STATE ON, BEFORE, OR AFTER JULY 1, 1992, WITH  
21 RESPECT TO EVENTS AND CIRCUMSTANCES OCCURRING ON OR AFTER  
22 SEPTEMBER 1, 2017.

23 **SECTION 3. Applicability.** This act applies to construction  
24 defect actions filed on or after the effective date of this act.

25 **SECTION 4. Safety clause.** The general assembly hereby finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, and safety.