



# Legislative Council Staff

## Research Note

Version: Final

Date: 6/14/2017

### Bill Number

House Bill 17-1279

### Sponsors

*Representatives Garnett &  
Saine  
Senators Tate & Guzman*

### Short Title

*Construction Defect Actions  
Notice Vote Approval*

### Research Analyst

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### Status

This research note reflects the final version of the bill, which became effective on May 23, 2017.

### Background

Colorado law does not define the term "construction defect," but generally a construction defect is a defect in the design, workmanship, materials, or systems used on a project that results in a failure of a component part of a building or structure and causes damage to a person or property, usually resulting in financial harm to the owner.

In 1991, the Colorado Common Interest Ownership Act was enacted, establishing a uniform framework for the creation and operation of common interest communities, such as homeowners' associations and condominium buildings. In 2001, Colorado enacted the Construction Defect Action Reform Act that distinguishes construction defect lawsuits related to real property from common lawsuits, such as negligence. Both laws have been amended, and challenged in the courts, a number of times.

### House Action

***House State, Veterans, and Military Affairs Committee (April 19, 2017).*** At the hearing, representatives from American Institute of Architects, Build Our Homes Right, Community Associations Institute, Homeownership Opportunity Alliance, the city of Lakewood, and NAIOP — the Commercial Real Estate Development Association, as well as one private citizen, testified in support of the bill.

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The committee adopted amendments L.001, L.003, L.004, L.005, L.006, and L.007, and referred the bill, as amended, to the House Committee of the Whole.

Amendment L.001:

- ! specified that written notice requirements of an anticipated commencement of a construction defect action do not apply to construction professionals identified after the notice is mailed or joined parties of the construction defect action;
- ! added that the presentation by the construction professional against whom the construction defect action is proposed and who is invited to address the unit owners can be made by the construction professional's designee;
- ! clarified language about the unit owners' association's attorneys payments in the disclosures contained in the required notice; and
- ! corrected terminology in the bill regarding construction defect actions.

Amendment L.003:

- ! decreased the time period for holding a meeting regarding an anticipated commencement of a construction defect action;
- ! specified that the disclosure and voting period will end 90 days after the mailing date of the meeting notice or when the unit owners' association determines that the construction defect action is either approved or disapproved, whichever occurs first;
- ! clarified language about the description of the construction defect action in the required notice; and
- ! changed language concerning the tolling of the statutes of limitations and repose.

Amendment L.004 specified information about the mailing list maintained by the unit owners' association and stated that an owner's vote can only be submitted once regarding the approval or rejection of the proposed construction defect action.

Amendment L.005 stated that owner approval is not required for amendments or supplements to a construction defect action after the required notice is made, and specified who is an affiliate to a development party.

Amendment L.006 clarified the applicability of the bill and changed the effective date of the bill.

Amendment L.007:

- ! addressed construction defect actions for facilities used for nonresidential purposes that do not exceed a specified monetary amount;
- ! specified the time period for maintaining voting records;
- ! clarified language regarding votes by banking institutions; and
- ! lengthened the time period for a unit owners' association to notify each construction professional prior to mailing the required notice to the unit owners prior to a proposed construction defect action.

***House second reading (April 21, 2017).*** The House adopted the House State, Veterans, and Military Affairs Committee report and Amendment No. 2. Amendment No. 2 amended the House State, Veterans, and Military Affairs Committee report by clarifying language about the meeting to consider commencement of a construction defect action and the related notice, the statute of limitation or statute of repose, and applicability of the bill. The House passed the bill on second reading, as amended.

**House third reading (April 24, 2017).** The House passed the bill on third reading with no amendments.

## Senate Action

**Senate Business, Labor, and Technology Committee (May 1, 2017).** At the hearing, representatives from Build Our Homes Right, Colorado Concern, Community Associations Institute, the city and county of Denver, Housing Colorado, city of Lakewood, and NAIOP — the Commercial Real Estate Development Association, and two private citizens testified in support of the bill. The committee referred the bill, unamended, to the Senate Committee of the Whole with a recommendation that it be placed on the consent calendar.

**Senate second reading (May 3, 2017).** The Senate passed the bill on second reading with no amendments.

**Senate third reading (May 4, 2017).** The Senate passed the bill on third reading with no amendments.

## Relevant Research

Legislative Council Staff, *Construction Defect Laws and Issues*, Interested Persons Memorandum, April 17, 2015: <https://tinyurl.com/yceujcw8>.