

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

April 19, 2017  
Date

Committee on State, Veterans, & Military Affairs.

After consideration on the merits, the Committee recommends the following:

HB17-1279 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 3, line 8, after "**of**" insert "**construction defect**".
- 2 Page 3, line 10, before "ACTION" insert "CONSTRUCTION DEFECT".
- 3 Page 3, strike lines 13 and 14 and substitute "CONSTRUCTION  
4 PROFESSIONAL AGAINST WHOM A CONSTRUCTION DEFECT ACTION IS  
5 PROPOSED; EXCEPT THAT THIS NOTICE REQUIREMENT DOES NOT APPLY TO:  
6 (A) CONSTRUCTION PROFESSIONALS IDENTIFIED AFTER THE NOTICE  
7 IS MAILED; OR  
8 (B) JOINED PARTIES IN A CONSTRUCTION DEFECT".
- 9 Page 3, line 19, strike "FIFTEEN" and substitute "TEN" and strike "THIRTY"  
10 and substitute "FIFTEEN".
- 11 Page 3, line 23, after "MEETING." insert "IN NO EVENT SHALL THE TIME  
12 PERIOD FOR PROVIDING THE NOTICE REQUIRED PURSUANT TO SUBSECTION  
13 (1)(c)(I) OF THIS SECTION, HOLDING THE MEETING REQUIRED PURSUANT TO  
14 THIS SUBSECTION (1)(c)(II), AND VOTING AS REQUIRED BY SUBSECTION  
15 (1)(d) OF THIS SECTION EXCEED NINETY DAYS."
- 16 Page 3, line 26, before "ACTION." insert "CONSTRUCTION DEFECT" and  
17 strike everything after the period.
- 18 Page 3, strike line 27.

1 Page 4, strike line 1 and substitute "THE DISCLOSURE AND VOTING PERIOD  
2 SHALL END NINETY DAYS AFTER THE MAILING DATE OF THE MEETING  
3 NOTICE OR WHEN THE ASSOCIATION DETERMINES THAT THE  
4 CONSTRUCTION DEFECT ACTION IS EITHER APPROVED OR DISAPPROVED,  
5 WHICHEVER OCCURS FIRST."

6 Page 4, strike line 6 and substitute:

7 "(C) THE PRESENTATION AT THE MEETING BY THE CONSTRUCTION  
8 PROFESSIONAL OR THE CONSTRUCTION PROFESSIONAL'S DESIGNEE MAY,  
9 BUT".

10 Page 4, line 11, strike "GENERAL".

11 Page 4, line 12, after "ACTION," insert "WHICH DESCRIPTION IDENTIFIES  
12 ALLEGED DEFECTS WITH REASONABLE SPECIFICITY,".

13 Page 4, strike line 14 and substitute "PERTINENT INFORMATION.  
14 REASONABLE SPECIFICITY DOES NOT REQUIRE EXPERT OPINIONS. THE  
15 NOTICE SHALL ALSO INCLUDE THE FOLLOWING DISCLOSURES:".

16 Page 5, strike line 7 and substitute "PAID (AN HOURLY FEE OF \$ \_\_\_\_\_) (A  
17 FIXED FEE OF \$ \_\_\_\_\_)).

18 Page 6, strike lines 19 and 20 and substitute:

19 "(IV) THE ASSOCIATION SHALL MAINTAIN A VERIFIED OWNER  
20 MAILING LIST THAT IDENTIFIES THE OWNERS TO WHOM THE ASSOCIATION  
21 MAILED THE NOTICE REQUIRED PURSUANT TO THIS SUBSECTION (1)(c). THE  
22 VERIFIED OWNER MAILING LIST SHALL INCLUDE, FOR EACH OWNER, THE  
23 ADDRESS, IF ANY, TO WHICH THE ASSOCIATION MAILED THE NOTICE  
24 REQUIRED PURSUANT TO THIS SUBSECTION (1)(c). THE ASSOCIATION SHALL  
25 PROVIDE A COPY OF THE VERIFIED OWNER MAILING LIST TO EACH  
26 CONSTRUCTION PROFESSIONAL WHO IS SENT A NOTICE PURSUANT TO THIS  
27 SUBSECTION (1)(c) AT THE OWNER MEETING REQUIRED UNDER SUBSECTION  
28 (1)(c)(II) OF THIS SECTION. THE OWNER MAILING LIST SHALL BE DEEMED  
29 VERIFIED IF A SPECIMEN COPY OF THE MAILING LIST IS CERTIFIED BY AN  
30 ASSOCIATION OFFICER OR AGENT. IF THE ASSOCIATION COMMENCES A  
31 CONSTRUCTION DEFECT ACTION AGAINST ANY CONSTRUCTION  
32 PROFESSIONAL, THE ASSOCIATION SHALL FILE ITS VERIFIED OWNER  
33 MAILING LIST AND RECORDS OF VOTES RECEIVED FROM OWNERS DURING  
34 THE VOTING PERIOD WITH THE APPROPRIATE FORUM UNDER SEAL.

1 (V) THE SUBSTANCE OF A PROPOSED CONSTRUCTION DEFECT  
2 ACTION MAY BE AMENDED OR SUPPLEMENTED AFTER THE MEETING, BUT  
3 AN".

4 Page 6, line 24, after the period add "OWNER APPROVAL PURSUANT TO  
5 SUBSECTION (1)(d) OF THIS SECTION IS NOT REQUIRED FOR AMENDMENTS  
6 OR SUPPLEMENTS TO A CONSTRUCTION DEFECT ACTION MADE AFTER THE  
7 NOTICE PURSUANT TO THIS SUBSECTION (1)(c) IS SENT."

8 Page 7, line 1, before "ACTION" insert "CONSTRUCTION DEFECT".

9 Page 7, line 4, strike "IN A PLANNED COMMUNITY".

10 Page 7, strike lines 5 through 7 and substitute "CONSTRUCTION DEFECT  
11 ACTION IF THE ALLEGED CONSTRUCTION DEFECT PERTAINS TO A FACILITY  
12 THAT IS INTENDED AND USED FOR NONRESIDENTIAL PURPOSES AND IF THE  
13 REMEDY 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 Page 7, line 9, after "VOTE" insert "SHALL BE SUBMITTED ONLY ONCE  
19 AND".

20 Page 7, line 12, strike the period and add "UNTIL THE CONCLUSION OF THE  
21 CONSTRUCTION DEFECT ACTION, INCLUDING ALL APPEALS, IF ANY."

22 Page 7, strike lines 13 through 16 and substitute:

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

25 (B) ALL STATUTES OF LIMITATION AND REPOSE APPLICABLE TO  
26 CLAIMS BASED ON DEFECTS DESCRIBED WITH REASONABLE SPECIFICITY IN  
27 THE NOTICE, WHICH MAY BE SUPPLEMENTED OR AMENDED PURSUANT TO  
28 SUBSECTION (1)(c)(IV) OF THIS SECTION, ARE TOLLED FROM THE DATE THE  
29 NOTICE SENT PURSUANT TO SUBSECTION (1)(c) OF THIS SECTION IS MAILED  
30 UNTIL EITHER THE NINETY-DAY VOTING AND DISCLOSURE PERIOD ENDS OR  
31 UNTIL THE ASSOCIATION DETERMINES THAT THE CONSTRUCTION DEFECT  
32 ACTION IS EITHER APPROVED OR DISAPPROVED, WHICHEVER OCCURS FIRST.

33 (C) THE APPLICABLE STATUTES OF LIMITATION AND REPOSE THAT  
34 APPLY TO CLAIMS BASED ON A DEFECT DESCRIBED IN THE NOTICE WITH

1 REASONABLE SPECIFICITY ARE TOLLED PURSUANT TO THIS SUBSECTION  
2 (1)(d)(II) ONCE, AND MAY NOT EXTEND THE STATUTES OF LIMITATION AND  
3 REPOSE THAT APPLY TO CLAIMS BASED ON THAT DEFECT FOR MORE THAN  
4 A TOTAL OF NINETY DAYS, RESPECTIVELY; EXCEPT THAT, IF A DEFECT NOT  
5 INCLUDED IN THE NOTICE SENT PURSUANT TO SUBSECTION (1)(c) OF THIS  
6 SECTION IS THE SUBJECT OF A LATER VOTE, TOLLING PURSUANT TO THIS  
7 SUBSECTION (1)(d) APPLIES."

8 Page 7, line 25, change the period to a semicolon and add "AND  
9 "AFFILIATE" INCLUDES AN ENTITY CONTROLLED OR OWNED, IN WHOLE OR  
10 IN PART, BY ANY PERSON THAT CONTROLS OR OWNS A DEVELOPMENT  
11 PARTY OR BY THE SPOUSE OF A DEVELOPMENT PARTY."

12 Page 7, line 27, change the semicolon to a comma and add "UNLESS A  
13 VOTE FROM SUCH AN INSTITUTION IS ACTUALLY RECEIVED BY THE  
14 ASSOCIATION;"

15 Page 8, line 14, strike "THREE" and substitute "FIVE".

16 Page 8, line 17, strike "LISTED IN THE NOTICE OF CLAIM" and substitute  
17 "AGAINST WHOM A CONSTRUCTION DEFECT ACTION IS PROPOSED".

18 Page 9, strike lines 11 through 26.

19 Strike page 10 and substitute:

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

26 **SECTION 3. Applicability.** This act applies to construction  
27 defect actions as to which the cause of action accrued on or after the  
28 effective date of this act.

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

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