

Construction Liability

1 **The proposed amendment to the Colorado Constitution:**

- 2 ♦ prohibits limits, with some exceptions, on a property owner's ability to recover
3 damages when improvements to property are not constructed in a "good and
4 workmanlike manner";

- 5 ♦ defines an improvement constructed in a "good and workmanlike manner" as
6 an improvement that is suitable for its intended purposes.

7 **Background**

8 Currently, state law establishes a procedure to recover damages from a construction
9 professional when construction is defective. Under this law, a property owner may sue the
10 responsible construction professional after giving notice and providing an opportunity to
11 fix the defect. Construction professionals include architects, contractors, developers, and
12 others involved in the construction business. If an agreement to fix the defect is not reached
13 within 75 days in the case of residential property, or 90 days in the case of commercial
14 property, the property owner may sue the construction professional responsible for the
15 defect.

16 A property owner who sues, and wins, may be reimbursed for the lesser of the
17 following three dollar amounts: 1) the value of the property without the defect, 2) the cost
18 to replace the property, or 3) the reasonable cost to repair the defect. Medical expenses
19 resulting from an injury are fully reimbursable, but awards for "pain and suffering" for these
20 injuries are capped at \$250,000. In addition, if the owner can show that the construction
21 professional committed fraud, he or she may be awarded up to an additional \$250,000.
22 Damage awards may also include the costs associated with moving, interest, or legal fees.
23 Under this law, a lawsuit must be filed within two years from the date of discovering the
24 defect or six years from the date the construction occurred.

25 ***The proposal.*** This proposal creates a new section in the state constitution that
26 affects current law. It removes limitations on the amount of money a property owner can
27 collect in damages, except for punitive damages and lawsuits involving governments. It
28 also sets in the state constitution the current time frames for filing a lawsuit. Finally, the
29 proposal could eliminate the current requirement that a property owner and construction
30 professional try to resolve the problem before bringing a lawsuit. In addition to these
31 changes to current law, the proposal affects the types of laws the legislature can pass in the
32 future concerning construction problems.

1 **Arguments For**

2 1) The proposal protects property owners by ensuring they can be fully
3 compensated for faulty construction. Property owners will no longer be limited in their
4 ability to recover damages. Damages will be determined on a case-by-case basis in a court
5 of law, rather than through a restrictive formula. Property owners will again be eligible for
6 full compensation for the pain and suffering caused by a defect.

7 2) The proposal changes a system that favors construction professionals at the
8 expense of property owners. Individual property owners do not have the necessary time
9 or resources to effectively negotiate with large corporations that may be responsible. It
10 creates constitutional standards that safeguard property owners from laws that limit their
11 ability to collect damages.

12 **Arguments Against**

13 1) The proposal will drive up the cost of insurance for construction professionals
14 and ultimately the cost of housing to consumers. An increase in the number of lawsuits, and
15 the awards that result from those lawsuits, could make insurance costs prohibitive, driving
16 builders out of the market. In the long run, such market consolidation hurts both the
17 construction sector and consumers through higher building prices and fewer choices within
18 the construction industry.

19 2) A process already exists for property owners and construction professionals to
20 resolve construction defect disputes without immediately turning to the courts. The current
21 system also defines damages in a way that is fair to both property owners and construction
22 professionals: It compensates property owners for the actual cost of fixing their property
23 but limits excessive compensation.

24 **Estimate of Fiscal Impact**

25 This proposal may affect the time devoted to construction-related cases by Colorado
26 courts. If the proposal increases the incentive for property owners to pursue claims, the
27 caseload and the time spent per case may increase. On the other hand, if it increases the
28 incentive for construction professionals to either increase construction quality or settle
29 claims out of court, the time devoted to construction-related cases may decrease.
30 Ultimately, the effect of the proposal on the courts will depend on the number of claims
31 filed, the portion of those claims settled out of court, and the time devoted to each case that
32 goes to trial.