

## Construction Liability

1 The proposed amendment to the Colorado Constitution:

- 2       ♦ prohibits limitations on a property owner's ability to recover damages that  
3       result from construction defects on his or her property with certain  
4       exceptions;
- 5       ♦ eliminates the requirement that property owners give notice to builders  
6       before suing for damages; and
- 7       ♦ provides a minimum time limit for when lawsuits may be filed.

### 8 **Background**

9           Under current law, when new construction is defective, a property owner may sue  
10          the person responsible for the defect after notifying the responsible party and providing  
11          an opportunity to fix the defect. If an agreement to fix the defect is not reached within 75  
12          days in the case of residential property, or 90 days in the case of commercial property, the  
13          property owner may sue the person responsible for the defect.

14          Currently, a property owner who sues, and wins, may be reimbursed for: the value  
15          of the property without the alleged defect; the cost to replace the property; or the  
16          reasonable cost to repair the defect, whichever is less. A property owner may also be  
17          awarded up to \$250,000, if the defect results in personal or bodily injury and up to  
18          \$250,000 under the Colorado Consumer Protection Act. Damage awards may also include  
19          the costs associated with moving, interest, and legal fees. Most construction professionals  
20          carry insurance to cover the risks of litigation.

21          This proposal would eliminate the current process requiring a property owner and  
22          construction professional to try and resolve the construction defect prior to bringing a  
23          lawsuit. It would also remove limitations on damage awards but allow limits on punitive  
24          damages and laws for governmental immunity. The proposal requires that property  
25          owners be given at least two years from the date of discovering the defect to file a lawsuit.  
26          However, state law may require a property owner to file a lawsuit within six years from  
27          the date the construction occurred.

### 28 **Arguments For**

1 1) Property owners will no longer be limited in their ability to recover damages  
2 related to construction defects. This proposal provides a constitutional right for property  
3 owners to sue in the event of faulty construction. It restores fairness to the current  
4 system, which allows a construction professional to be responsible for less than the actual  
5 damage caused.

6 2) The proposal changes the current system that favors construction professionals at  
7 the expense of property owners. Individual property owners do not have the necessary  
8 time or resources to effectively negotiate with large corporations that may be responsible  
9 for the defects. Property owners should be able to sue to ensure that work is properly  
10 completed. Construction professionals can always write disclaimers into their construction  
11 contract and should not need a law to protect them from valid claims.

## 12 **Arguments Against**

13 1) A process already exists for property owners and construction professionals to  
14 resolve construction defect disputes without immediately turning to the courts. The  
15 current system also defines damages in a way that is fair to both owners and builders.  
16 Furthermore, current property owners may find themselves in a position to be sued by  
17 future owners for defects resulting from work done on the property.

18 2) The proposal will drive up the cost of insurance for construction professionals and  
19 ultimately the cost of housing to consumers. Any increase in the number of lawsuits could  
20 make insurance costs prohibitive, driving builders out of the market. In the long run, such  
21 market consolidation hurts both the vitality of the construction sector and consumers  
22 through higher building prices and fewer choices within the construction industry.

## 23 **Estimate of Fiscal Impact**

24 The proposal is likely to increase the number of construction defect claims filed  
25 with the state courts. However, construction defect cases are not currently tracked and it  
26 is difficult to estimate how the proposal will impact case filings or settlements. If the  
27 number of construction defect cases increases, the amount of time to process these cases  
28 would also increase, thereby increasing associated administrative costs.