

**Construction Liability**

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

- 2           ♦ prohibits limits on a property owner's ability to sue to recover damages  
3           resulting from construction defects on his or her property with certain  
4           exceptions;
- 5           ♦ prohibits limits on the amount of money a property owner may be awarded in  
6           such a lawsuit;
- 7           ♦ establishes a minimum time frame for filing a lawsuit.

8 **Background**

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

14          Currently, a property owner who sues, and wins, may be reimbursed for the lesser  
15          of the following three dollar amounts: 1) the value of the property without the defect, 2)  
16          the cost to replace the property, or 3) the reasonable cost to repair the defect. Awards for  
17          "pain and suffering" for bodily injury are capped at \$250,000. In addition, if the owner can  
18          show that the responsible party committed fraud, he or she may be awarded up to an  
19          additional \$250,000. Damage awards may also include the costs associated with moving,  
20          interest, and legal fees. Most construction professionals carry insurance to cover the risks  
21          of litigation.

22          This proposal affects construction defect law in Colorado in several important ways.  
23          It eliminates the current process requiring a property owner and construction professional  
24          to try and resolve the construction defect prior to bringing a lawsuit. It also removes  
25          limitations on the amount of money a property owner can collect in damages, except for  
26          punitive damages and lawsuits involving governments. Finally, the proposal requires that  
27          property owners be given at least two years from the date of discovering the defect to file  
28          a lawsuit. However, state law may require a property owner to file a lawsuit within six  
29          years from the date the construction occurred.

1     **Arguments For**

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

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 for the  
10 defects. It guarantees property owners the ability to sue to ensure that work is properly  
11 completed.

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 current  
15 system also defines damages in a way that is fair to both owners and builders. Furthermore,  
16 this proposal allows anyone who makes improvements to property, not just professionals,  
17 to be sued by 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  
19 and ultimately the cost of housing to consumers. Any increase in the number of lawsuits  
20 could make insurance costs prohibitive, driving builders out of the market. In the long run,  
21 such 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 with  
25 the state courts. If the number of construction defect cases increases, the amount of time  
26 to process these cases would also increase, thereby increasing court costs.