

Final Draft with Responses

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. Awards for "pain and suffering" for bodily
20 and personal injury are capped at \$250,000; a property owner cannot be awarded money
21 due to the loss of use of property. In addition, if the owner can show that the construction
22 professional knowingly violated the law that protects consumers from fraud, he or she may
23 be awarded up to an additional \$250,000. Damage awards may also include the costs
24 associated with moving, interest, or legal fees. Under this law, a lawsuit must be filed within
25 two years from the date of discovering the defect or six years from the date the construction
26 occurred.

27 ***The proposal.*** This proposal creates a new section in the state constitution that
28 affects current law. It removes limitations on the amount of money a property owner can
29 collect in damages, except for punitive damages and lawsuits against governments. It also
30 sets in the state constitution the current time frames for filing a lawsuit. Finally, the
31 proposal could eliminate the current requirement that a property owner and construction
32 professional try to resolve the problem before bringing a lawsuit. In addition to these
33 changes to current law, the proposal affects the types of laws the legislature can pass in the
34 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. For the past three years, property owners have been
4 limited in their ability to recover damages. Damages will be determined on a case-by-case
5 basis in a court of law, rather than through a formula that treats all property owners the
6 same. Property owners will again be eligible for reasonable compensation for the pain and
7 suffering caused by a defect.

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

13 **Arguments Against**

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

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

25 **Estimate of Fiscal Impact**

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