

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0696.02 Duane Gall x4335

SENATE BILL 14-220

SENATE SPONSORSHIP

Ulibarri and Scheffel, Cadman, Grantham, Herpin, Schwartz, Steadman, Tochtrop

HOUSE SPONSORSHIP

Singer and DelGrosso, Priola

Senate Committees

State, Veterans, & Military Affairs
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING PREREQUISITES TO THE AUTHORITY OF A UNIT OWNERS'**
102 **ASSOCIATION TO PURSUE RESOLUTION OF DISPUTES INVOLVING**
103 **CONSTRUCTION DEFECTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill states that when the declaration, bylaws, or rules of a common interest community require mediation or arbitration of construction defect claims and the requirement is later removed, mediation or arbitration is still required for a construction defect claim

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

based on an alleged act or omission that occurred when the mediation or arbitration requirement was in place. Section 1 also specifies that the arbitration must take place in the judicial district in which the community is located and that the arbitrator must:

- ! Be a neutral third party;
- ! Make certain disclosures before being selected; and
- ! Be selected as specified in the community's governing documents if possible or, if that is not possible, in accordance with the uniform arbitration act.

Section 3 adds to the disclosures required prior to the purchase and sale of property in a common interest community a notice that the community's governing documents may require binding arbitration of certain disputes.

Section 2 requires that before a construction defect lawsuit is filed on behalf of the association, the executive board of the association must give advance notice to all unit owners, together with a disclosure of the projected costs, duration, and financial impact of the litigation, and must obtain the written consent of a majority of the unit owners.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 38-33.3-124, **amend**
3 (3); and **add** (1) (a) (III) as follows:

4 **38-33.3-124. Legislative declaration - alternative dispute**
5 **resolution encouraged - policy statement required.** (1) (a) (III) THE
6 GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT, WHEN THE
7 DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF A COMMON
8 INTEREST COMMUNITY CONTAIN A REQUIREMENT THAT CONSTRUCTION
9 DEFECT CLAIMS BE SUBMITTED TO MEDIATION OR ARBITRATION, THAT
10 REQUIREMENT REPRESENTS A COMMITMENT ON THE PART OF THE UNIT
11 OWNERS AND THE ASSOCIATION ON WHICH A DEVELOPER, CONTRACTOR,
12 ARCHITECT, OR OTHER PERSON INVOLVED WITH CONSTRUCTION IS
13 ENTITLED TO RELY. THEREFORE, A LATER AMENDMENT TO THE
14 DECLARATION THAT REMOVES OR AMENDS THE MEDIATION OR
15 ARBITRATION REQUIREMENT SHOULD NOT APPLY TO CONSTRUCTION

1 DEFECT CLAIMS BASED ON ALLEGED ACTS OR OMISSIONS THAT PREDATE
2 THE AMENDMENT.

3 (3) (a) The declaration, bylaws, or rules of the association may
4 specify situations in which disputes shall be resolved by binding
5 arbitration under the uniform arbitration act, part 2 of article 22 of title
6 13, C.R.S., or by another means of alternative dispute resolution under the
7 "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S. IF THOSE
8 SITUATIONS INCLUDE A CLAIM AGAINST A DEVELOPER, CONTRACTOR,
9 ARCHITECT, OR OTHER PERSON INVOLVED IN THE CONSTRUCTION OF THE
10 COMMON INTEREST COMMUNITY OR ANY PART THEREOF, A SUBSEQUENT
11 AMENDMENT TO THE DECLARATION, BYLAWS, OR RULES AND
12 REGULATIONS THAT REMOVES OR AMENDS THE MEDIATION OR
13 ARBITRATION REQUIREMENT IS NOT EFFECTIVE WITH REGARD TO A
14 CONSTRUCTION DEFECT CLAIM BASED ON AN ALLEGED ACT OR OMISSION
15 THAT PREDATES THE AMENDMENT.

16 (b) (I) A CLAIM AGAINST A DEVELOPER, CONTRACTOR, ARCHITECT,
17 OR OTHER PERSON INVOLVED IN THE CONSTRUCTION OF THE COMMON
18 INTEREST COMMUNITY OR ANY PART THEREOF MUST BE RESOLVED BY THE
19 ARBITRATION SERVICE PROVIDER PROVIDED FOR IN THE DECLARATION,
20 BYLAWS, OR RULES OF THE ASSOCIATION UNLESS THE ASSOCIATION
21 PROVES TO AN APPROPRIATE COURT THAT THE ARBITRATION SERVICE
22 PROVIDER IS NOT QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION
23 ACT, PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S., IN WHICH CASE THE
24 PARTIES SHALL COOPERATE TO SELECT AN ARBITRATION SERVICE
25 PROVIDER REASONABLY ACCEPTABLE TO ALL PARTIES TO THE ACTION. IF
26 NO ARBITRATION SERVICE PROVIDER IS SPECIFIED IN THE DECLARATION,
27 BYLAWS, OR RULES OF THE ASSOCIATION OR IF THE PARTIES ARE UNABLE

1 TO AGREE UPON AN ARBITRATION SERVICE PROVIDER, THE ARBITRATION
2 SERVICE PROVIDER WILL BE SELECTED IN ACCORDANCE WITH THE UNIFORM
3 ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S.

4 (II) NOTWITHSTANDING ANY PROVISION OF THE DECLARATION,
5 BYLAWS, OR RULES OF THE ASSOCIATION TO THE CONTRARY, AN
6 ARBITRATOR SELECTED TO PRESIDE OVER A CONSTRUCTION DEFECT CLAIM
7 MUST BE A NEUTRAL THIRD PARTY AS PROVIDED IN SECTION 13-22-211 (2),
8 C.R.S. BEFORE BEING SELECTED TO PRESIDE OVER THE CLAIM, A PROPOSED
9 ARBITRATOR SHALL MAKE THE DISCLOSURES REQUIRED BY SECTION
10 13-22-212, C.R.S.

11 (III) NOTWITHSTANDING ANY PROVISION OF THE DECLARATION,
12 BYLAWS, OR RULES OF THE ASSOCIATION TO THE CONTRARY, UNLESS THE
13 PARTIES OTHERWISE AGREE, THE ARBITRATION MUST BE HELD AT A
14 MUTUALLY AGREEABLE LOCATION WITHIN THE JUDICIAL DISTRICT IN
15 WHICH THE COMMON INTEREST COMMUNITY IS LOCATED.

16 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-303.5,
17 **amend** (1) and (2) as follows:

18 **38-33.3-303.5. Commencement of litigation by executive board**
19 **- notice to unit owners - disclosure of projected costs - consent.**

20 (1) (a) ~~In the event~~ IF the executive board, pursuant to section
21 38-33.3-302 (1) (d), ~~institutes~~ INTENDS TO INSTITUTE ANY LEGAL ACTION,
22 INCLUDING an action AS DEFINED IN SECTION 13-20-802.5 (1), C.R.S.,
23 asserting defects in the construction of ~~five or more units, the provisions~~
24 ~~of this section shall apply.~~ For purposes of this section, "action" shall
25 ~~have the same meaning as set forth in section 13-20-803 (1), C.R.S.~~ THE
26 COMMON INTEREST COMMUNITY OR ANY PART THEREOF, THIS SECTION
27 APPLIES.

1 (b) The executive board shall substantially comply with ~~the~~
2 ~~provisions of this section.~~

3 (2) (a) ~~Prior to the service of the summons and complaint on any~~
4 ~~defendant with respect to an action governed by this section~~ WITHIN THE
5 TIME PERIOD SPECIFIED IN PARAGRAPH (c) OR (d) OF THIS SUBSECTION (2),
6 the executive board shall mail or deliver written notice of the
7 ~~commencement or anticipated commencement of such~~ THE action to each
8 unit owner at the OWNER'S last-known address described in the
9 association's records.

10 (b) The notice required by paragraph (a) of this subsection (2)
11 ~~shall state~~ MUST BE PREPARED AND SIGNED BY A PERSON OTHER THAN,
12 AND NOT EMPLOYED BY OR OTHERWISE AFFILIATED WITH, THE ATTORNEY
13 OR LAW FIRM THAT REPRESENTS OR WILL REPRESENT THE ASSOCIATION IN
14 THE CONSTRUCTION DEFECT DISPUTE AND MUST CONTAIN a general
15 description of the following:

16 (I) The nature of the action and the relief sought; and

17 (II) The expenses and fees that the executive board anticipates
18 will be incurred, DIRECTLY OR INDIRECTLY, in prosecuting the action,
19 INCLUDING:

20 (A) ATTORNEY FEES, CONSULTANT FEES, EXPERT WITNESS FEES,
21 AND COURT COSTS, WHETHER INCURRED BY THE ASSOCIATION DIRECTLY
22 OR FOR WHICH IT MAY BE LIABLE IF IT IS NOT THE PREVAILING PARTY OR
23 THAT THE ASSOCIATION WILL BE REQUIRED, PURSUANT TO AN AGREEMENT
24 WITH ITS ATTORNEY OR OTHERWISE, TO PAY IF IT ELECTS NOT TO PROCEED
25 WITH THE CLAIM;

26 (B) THE IMPACT ON THE VALUE OF THE UNITS THAT ARE THE
27 SUBJECT OF THE ACTION, BOTH DURING THE PENDENCY OF THE LITIGATION

1 AND AFTER ITS RESOLUTION;

2 (C) THE IMPACT ON THE MARKETABILITY OF UNITS THAT ARE NOT
3 THE SUBJECT OF THE ACTION, INCLUDING THE IMPACT ON THE ABILITY OF
4 OWNERS TO REFINANCE AND BUYERS TO GET FINANCING, DURING THE
5 PENDENCY OF THE LITIGATION AND AFTER ITS RESOLUTION;

6 (D) THE MANNER IN WHICH THE ASSOCIATION PROPOSES TO FUND
7 THE COST OF THE LITIGATION, INCLUDING ANY PROPOSED SPECIAL
8 ASSESSMENTS OR USE OF RESERVES; AND

9 (E) THE ANTICIPATED DURATION OF THE LITIGATION AND THE
10 LIKELIHOOD OF SUCCESS.

11 (c) WITH RESPECT TO AN ACTION AS DEFINED IN SECTION
12 13-20-802.5 (1), C.R.S., ASSERTING DEFECTS IN THE CONSTRUCTION OF
13 THE COMMON INTEREST COMMUNITY OR ANY PART THEREOF:

14 (I) THE NOTICE REQUIRED UNDER PARAGRAPH (b) OF THIS
15 SUBSECTION (2) MUST BE SENT AT LEAST SIXTY DAYS BEFORE SERVICE OF
16 THE NOTICE OF CLAIM UNDER SECTION 13-20-803.5, C.R.S., AND BEFORE
17 HIRING ANY EXPERTS OR CONSULTANTS, OR INCURRING OR AGREEING TO
18 PAY ANY EXPERT FEES OR CONSULTANT FEES, IN CONNECTION WITH THE
19 ACTION; AND

20 (II) THE ACTION IS NOT AUTHORIZED UNLESS THE EXECUTIVE
21 BOARD OBTAINS THE WRITTEN CONSENT OF UNIT OWNERS HOLDING AT
22 LEAST A MAJORITY OF THE TOTAL VOTING RIGHTS IN THE ASSOCIATION
23 AFTER GIVING NOTICE IN ACCORDANCE WITH SUBSECTION (2) OF THIS
24 SECTION. THIS CONSENT MUST BE OBTAINED DIRECTLY AND NOT AS A
25 RESULT OF PROXY VOTING.

26 (d) WITH RESPECT TO ANY LEGAL ACTION OTHER THAN AN ACTION
27 DESCRIBED IN PARAGRAPH (c) OF THIS SUBSECTION (2), THE NOTICE

1 REQUIRED UNDER PARAGRAPH (b) OF THIS SUBSECTION (2) MUST BE SENT
2 AT LEAST THIRTY DAYS BEFORE SERVICE OF THE SUMMONS AND
3 COMPLAINT.

4 **SECTION 3.** In Colorado Revised Statutes, 38-35.7-102, **amend**
5 (1) as follows:

6 **38-35.7-102. Disclosure - common interest community -**
7 **obligation to pay assessments - requirement for architectural**
8 **approval.** (1) On and after January 1, 2007, every contract for the
9 purchase and sale of residential real property in a common interest
10 community shall contain a disclosure statement in bold-faced type that is
11 clearly legible and in substantially the following form:

12 **THE PROPERTY IS LOCATED WITHIN A**
13 **COMMON INTEREST COMMUNITY AND IS**
14 **SUBJECT TO THE DECLARATION FOR SUCH**
15 **COMMUNITY. THE OWNER OF THE PROPERTY**
16 **WILL BE REQUIRED TO BE A MEMBER OF THE**
17 **OWNER'S ASSOCIATION FOR THE COMMUNITY**
18 **AND WILL BE SUBJECT TO THE BYLAWS AND**
19 **RULES AND REGULATIONS OF THE**
20 **ASSOCIATION. THE DECLARATION, BYLAWS,**
21 **AND RULES AND REGULATIONS WILL IMPOSE**
22 **FINANCIAL OBLIGATIONS UPON THE OWNER**
23 **OF THE PROPERTY, INCLUDING AN**
24 **OBLIGATION TO PAY ASSESSMENTS OF THE**
25 **ASSOCIATION. IF THE OWNER DOES NOT PAY**
26 **THESE ASSESSMENTS, THE ASSOCIATION**
27 **COULD PLACE A LIEN ON THE PROPERTY AND**

1 POSSIBLY SELL IT TO PAY THE DEBT. THE
2 DECLARATION, BYLAWS, AND RULES AND
3 REGULATIONS OF THE COMMUNITY MAY
4 PROHIBIT THE OWNER FROM MAKING
5 CHANGES TO THE PROPERTY WITHOUT AN
6 ARCHITECTURAL REVIEW BY THE
7 ASSOCIATION (OR A COMMITTEE OF THE
8 ASSOCIATION) AND THE APPROVAL OF THE
9 ASSOCIATION. THE DECLARATION FOR THE
10 COMMUNITY OR THE BYLAWS OR RULES AND
11 REGULATIONS OF THE ASSOCIATION MAY
12 REQUIRE THAT CERTAIN DISPUTES BE
13 RESOLVED BY MANDATORY, BINDING
14 ARBITRATION. PURCHASERS OF PROPERTY
15 WITHIN THE COMMON INTEREST COMMUNITY
16 SHOULD INVESTIGATE THE FINANCIAL
17 OBLIGATIONS OF MEMBERS OF THE
18 ASSOCIATION. PURCHASERS SHOULD
19 CAREFULLY READ THE DECLARATION FOR
20 THE COMMUNITY AND THE BYLAWS AND
21 RULES AND REGULATIONS OF THE
22 ASSOCIATION.

23 **SECTION 4. Effective date - applicability.** This act takes effect
24 on passage and applies to causes of action accruing on or after the
25 effective date of this act.

26 **SECTION 5. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.