

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0079.02 Duane Gall x4335

SENATE BILL 15-177

SENATE SPONSORSHIP

Scheffel and Ulibarri,

HOUSE SPONSORSHIP

DelGrosso and Singer,

Senate Committees

Business, Labor, & Technology

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>.)

The bill states that when the governing documents of a common interest community require mediation or arbitration of a construction defect claim and the requirement is later amended or removed, mediation or arbitration is still required for a construction defect claim. These provisions are in **section 2** of the bill. Section 2 also specifies that the

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.

mediation or 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 common interest community's governing documents or, if not so specified, in accordance with the uniform arbitration act.

Section 1 adds definitions of key terms.

Section 3 requires that before a construction defect claim is filed on behalf of the association:

- ! The parties must submit the matter to mediation before a neutral third party; and
- ! The board must give advance notice to all unit owners, together with a disclosure of the projected costs, duration, and financial impact of the construction defect claim, and must obtain the written consent of the owners of units to which at least a majority of the votes in the association are allocated.

Section 4 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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 38-33.3-103, **add**
3 (9.5), (13.5), and (16.3) as follows:

4 **38-33.3-103. Definitions.** As used in the declaration and bylaws
5 of an association, unless specifically provided otherwise or unless the
6 context otherwise requires, and in this article:

7 (9.5) "CONSTRUCTION DEFECT CLAIM" MEANS A CIVIL ACTION OR
8 AN ARBITRATION PROCEEDING FOR DAMAGES, INDEMNITY, OR
9 CONTRIBUTION BROUGHT AGAINST A DEVELOPMENT PARTY TO ASSERT A
10 CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM FOR
11 DAMAGES OR LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL
12 PROPERTY OR PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR
13 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY THAT IS PART OF

1 THE COMMON INTEREST COMMUNITY.

2 (13.5) "DEVELOPMENT PARTY" MEANS AN ARCHITECT,
3 CONTRACTOR, SUBCONTRACTOR, DEVELOPER, DECLARANT OR AFFILIATES
4 OF DECLARANT, BUILDER, BUILDER VENDOR, ENGINEER, OR INSPECTOR
5 PERFORMING OR FURNISHING THE DESIGN, SUPERVISION, INSPECTION,
6 CONSTRUCTION, OR OBSERVATION OF THE CONSTRUCTION OF ANY
7 IMPROVEMENT TO REAL PROPERTY THAT IS PART OF THE COMMON
8 INTEREST COMMUNITY OR ANY OTHER PARTY RESPONSIBLE FOR ANY PART
9 OF THE DESIGN OR CONSTRUCTION OF ANY PORTION OF THE COMMON
10 INTEREST COMMUNITY, OR ANY OF SUCH PARTIES' AFFILIATES, OR THE
11 OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYERS
12 OR SERVANTS OF ANY OF THEM.

13 (16.3) "GOVERNING DOCUMENTS" MEANS THE DECLARATION,
14 ARTICLES OF INCORPORATION, BYLAWS, RULES, REGULATIONS, POLICIES,
15 AND PROCEDURES OF A COMMON INTEREST COMMUNITY.

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

18 **38-33.3-124. Legislative declaration - alternative dispute**
19 **resolution encouraged - policy statement required.** (1) (a) (III) THE
20 GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT WHEN THE
21 GOVERNING DOCUMENTS OF A COMMON INTEREST COMMUNITY CONTAIN
22 A REQUIREMENT THAT CONSTRUCTION DEFECT CLAIMS BE SUBMITTED TO
23 MEDIATION OR ARBITRATION, THAT REQUIREMENT REPRESENTS A
24 COMMITMENT ON THE PART OF THE UNIT OWNERS AND THE ASSOCIATION
25 ON WHICH DEVELOPMENT PARTIES ARE ENTITLED TO RELY. THEREFORE, A
26 LATER AMENDMENT TO THE GOVERNING DOCUMENTS THAT REMOVES OR
27 AMENDS THE MEDIATION OR ARBITRATION REQUIREMENT SHOULD NOT

1 APPLY TO CLAIMS THAT ARE DESCRIBED IN THE MEDIATION OR
2 ARBITRATION REQUIREMENTS OF THE GOVERNING DOCUMENTS.

3 (3) (a) The ~~declaration, bylaws, or rules~~ GOVERNING DOCUMENTS
4 of the ~~association~~ COMMON INTEREST COMMUNITY may specify situations
5 in which disputes shall be resolved by MEDIATION OR binding arbitration
6 under the uniform arbitration act, part 2 of article 22 of title 13, C.R.S.,
7 THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECS. 1 TO 307, or by another
8 means of alternative dispute resolution under the "Dispute Resolution
9 Act", part 3 of article 22 of title 13, C.R.S. IF THOSE SITUATIONS INCLUDE
10 A CONSTRUCTION DEFECT CLAIM AGAINST A DEVELOPMENT PARTY, A
11 SUBSEQUENT AMENDMENT TO THE GOVERNING DOCUMENTS THAT
12 REMOVES OR AMENDS THE MEDIATION OR ARBITRATION REQUIREMENT IS
13 NOT EFFECTIVE WITH REGARD TO A CONSTRUCTION DEFECT CLAIM.

14 (b) (I) A CONSTRUCTION DEFECT CLAIM AGAINST A DEVELOPMENT
15 PARTY MUST BE RESOLVED BY THE MEDIATION OR ARBITRATION SERVICE
16 PROVIDER PROVIDED FOR IN THE GOVERNING DOCUMENTS UNLESS THE
17 ASSOCIATION PROVES TO AN APPROPRIATE COURT THAT THE MEDIATION
18 OR ARBITRATION SERVICE PROVIDER IS NOT QUALIFIED PURSUANT TO THE
19 UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S., IN
20 WHICH CASE THE PARTIES SHALL COOPERATE TO SELECT A MEDIATION OR
21 ARBITRATION SERVICE PROVIDER REASONABLY ACCEPTABLE TO ALL
22 PARTIES TO THE CONSTRUCTION DEFECT CLAIM. IF NO ARBITRATION
23 SERVICE PROVIDER IS SPECIFIED IN THE GOVERNING DOCUMENTS OR IF THE
24 PARTIES ARE UNABLE TO AGREE UPON A MEDIATION OR ARBITRATION
25 SERVICE PROVIDER, THEN, WITH RESPECT TO MEDIATION, THE PARTIES MAY
26 PETITION THE DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH THE
27 COMMON INTEREST COMMUNITY IS LOCATED TO APPOINT A MEDIATOR

1 AND, WITH RESPECT TO ARBITRATION, THE ARBITRATION SERVICE
2 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 GOVERNING
5 DOCUMENTS TO THE CONTRARY, A MEDIATOR OR ARBITRATOR SELECTED
6 TO PRESIDE OVER THE CONSTRUCTION DEFECT CLAIM MUST BE A NEUTRAL
7 THIRD PARTY AS PROVIDED IN SECTION 13-22-211 (2), C.R.S. BEFORE
8 BEING SELECTED TO PRESIDE OVER THE CONSTRUCTION DEFECT CLAIM, A
9 PROPOSED MEDIATOR OR ARBITRATOR SHALL MAKE THE DISCLOSURES
10 REQUIRED BY SECTION 13-22-212, C.R.S.

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

16 **SECTION 3.** In Colorado Revised Statutes, 38-33.3-303.5,
17 **amend** (1) and (2); and **add** (1.5) 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~~ BEFORE the executive board, pursuant to section
21 38-33.3-302 (1) (d), ~~institutes an action asserting defects in the~~
22 ~~construction of five or more units, the provisions of this section shall~~
23 ~~apply. For purposes of this section, "action" shall have the same meaning~~
24 ~~as set forth in section 13-20-803 (1), C.R.S.~~ ANY LEGAL ACTION,
25 INCLUDING A CONSTRUCTION DEFECT CLAIM,

26 ~~(b) the executive board shall substantially comply with the~~
27 ~~provisions of this section.~~

1 (1.5) AS A CONDITION PRECEDENT TO ANY CONSTRUCTION DEFECT
2 CLAIM, THE PARTIES MUST SUBMIT THE MATTER TO MEDIATION BEFORE A
3 NEUTRAL THIRD PARTY MUTUALLY SELECTED BY THE PARTIES TO THE
4 CONSTRUCTION DEFECT CLAIM. IF THE PARTIES ARE NOT ABLE TO AGREE
5 UPON A MEDIATOR, THEY MAY USE AN ALTERNATIVE SELECTION METHOD
6 SPECIFIED IN THE GOVERNING DOCUMENTS OR, IF NO ALTERNATIVE
7 SELECTION METHOD IS SPECIFIED, MAY PETITION THE DISTRICT COURT IN
8 THE JURISDICTION IN WHICH THE COMMON INTEREST COMMUNITY IS
9 LOCATED TO APPOINT A MEDIATOR FOR THE CONSTRUCTION DEFECT
10 CLAIM.

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

18 (b) WITH RESPECT TO A CONSTRUCTION DEFECT CLAIM, the notice
19 required by paragraph (a) of this subsection (2) ~~shall state~~ MUST BE
20 PREPARED AND SIGNED BY A PERSON OTHER THAN, AND NOT EMPLOYED BY
21 OR OTHERWISE AFFILIATED WITH, THE ATTORNEY OR LAW FIRM THAT
22 REPRESENTS OR WILL REPRESENT THE ASSOCIATION IN THE CONSTRUCTION
23 DEFECT CLAIM AND MUST CONTAIN a general description of the following:

24 (I) The nature of the ~~action~~ CONSTRUCTION DEFECT CLAIM and the
25 relief sought; and

26 (II) The expenses and fees that the executive board anticipates
27 will be incurred BY THE ASSOCIATION in prosecuting the ~~action~~

1 CONSTRUCTION DEFECT CLAIM, INCLUDING:

2 (A) ATTORNEY FEES, CONSULTANT FEES, EXPERT WITNESS FEES,
3 AND COURT COSTS, WHETHER INCURRED BY THE ASSOCIATION DIRECTLY
4 OR FOR WHICH IT MAY BE LIABLE IF IT IS NOT THE PREVAILING PARTY OR
5 THAT THE ASSOCIATION WILL BE REQUIRED TO PAY IF IT ELECTS NOT TO
6 PROCEED WITH THE CONSTRUCTION DEFECT CLAIM;

7 (B) THE IMPACT ON THE VALUE OF THE UNITS THAT ARE THE
8 SUBJECT OF THE CONSTRUCTION DEFECT CLAIM, BOTH DURING THE
9 PENDENCY OF THE CONSTRUCTION DEFECT CLAIM AND AFTER ITS
10 RESOLUTION, AS WELL AS THE IMPACT ON THE VALUE OF THOSE UNITS IF
11 THE ASSOCIATION DOES NOT MOVE FORWARD WITH THE CONSTRUCTION
12 DEFECT CLAIM;

13 (C) THE IMPACT ON THE MARKETABILITY OF THE UNITS THAT ARE
14 THE SUBJECT OF THE CONSTRUCTION DEFECT CLAIM, INCLUDING THE
15 IMPACT ON THE ABILITY OF OWNERS TO REFINANCE AND BUYERS TO
16 OBTAIN FINANCING, DURING THE PENDENCY OF THE CONSTRUCTION
17 DEFECT CLAIM AND AFTER ITS RESOLUTION;

18 (D) FOR ANY UNITS WHERE THERE ARE NO ALLEGATIONS OF
19 DEFECTS IN THE DESIGN OR CONSTRUCTION, THE IMPACT ON THE VALUE
20 AND MARKETABILITY OF THE UNITS, INCLUDING THE IMPACT ON THE
21 ABILITY OF THE OWNERS TO REFINANCE AND BUYERS TO OBTAIN
22 FINANCING DURING THE PENDENCY OF THE CONSTRUCTION DEFECT CLAIM
23 OR AFTER ITS RESOLUTION;

24 (E) THE MANNER IN WHICH THE ASSOCIATION PROPOSES TO FUND
25 THE COST OF THE CONSTRUCTION DEFECT CLAIM, INCLUDING ATTORNEY
26 FEES, CONSULTANT FEES, EXPERT WITNESS FEES, AND COURT OR
27 ARBITRATION COSTS, INCLUDING ANY PROPOSED SPECIAL ASSESSMENTS OR

1 USE OF RESERVES; AND

2 (F) THE ANTICIPATED DURATION OF THE CONSTRUCTION DEFECT
3 CLAIM AND THE LIKELIHOOD OF SUCCESS.

4 (c) WITH RESPECT TO A CONSTRUCTION DEFECT CLAIM:

5 (I) THE NOTICE REQUIRED UNDER PARAGRAPH (a) OF THIS
6 SUBSECTION (2) MUST BE SENT AT LEAST SIXTY DAYS BEFORE SERVICE OF
7 THE NOTICE OF CLAIM UNDER SECTION 13-20-803.5, C.R.S., AND BEFORE
8 HIRING ANY EXPERTS OR CONSULTANTS, OR INCURRING OR AGREEING TO
9 PAY ANY EXPERT FEES OR CONSULTANT FEES, IN CONNECTION WITH THE
10 CONSTRUCTION DEFECT CLAIM; AND

11 (II) THE CONSTRUCTION DEFECT CLAIM IS NOT AUTHORIZED
12 UNLESS THE EXECUTIVE BOARD OBTAINS THE WRITTEN CONSENT OF THE
13 OWNERS, OTHER THAN THE DECLARANT, OF UNITS TO WHICH AT LEAST A
14 MAJORITY OF THE TOTAL VOTES, EXCLUDING VOTES ALLOCATED TO UNITS
15 OWNED BY THE DECLARANT, IN THE ASSOCIATION ARE ALLOCATED, AFTER
16 GIVING NOTICE IN ACCORDANCE WITH THIS SUBSECTION (2). THIS CONSENT
17 MUST BE OBTAINED DIRECTLY AND NOT AS A RESULT OF PROXY VOTING.

18 (d) WITH RESPECT TO ANY LEGAL ACTION OTHER THAN A
19 CONSTRUCTION DEFECT CLAIM DESCRIBED IN PARAGRAPH (c) OF THIS
20 SUBSECTION (2), THE NOTICE REQUIRED UNDER PARAGRAPH (a) OF THIS
21 SUBSECTION (2) MUST BE SENT AT LEAST THIRTY DAYS BEFORE SERVICE OF
22 THE SUMMONS AND COMPLAINT.

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

25 **38-35.7-102. Disclosure - common interest community -**
26 **obligation to pay assessments - requirement for architectural**
27 **approval.** (1) On and after January 1, ~~2007~~ 2016, every contract for the

1 purchase and sale of residential real property in a common interest
2 community shall contain a disclosure statement in bold-faced type that is
3 clearly legible and in substantially the following form:

4 **THE PROPERTY IS LOCATED WITHIN A**
5 **COMMON INTEREST COMMUNITY AND IS**
6 **SUBJECT TO THE DECLARATION FOR SUCH**
7 **THE COMMUNITY. THE OWNER OF THE**
8 **PROPERTY WILL BE REQUIRED TO BE A**
9 **MEMBER OF THE OWNER'S ASSOCIATION FOR**
10 **THE COMMUNITY AND WILL BE SUBJECT TO**
11 **THE BYLAWS AND RULES AND REGULATIONS**
12 **OF THE ASSOCIATION. THE DECLARATION,**
13 **BYLAWS, AND RULES AND REGULATIONS WILL**
14 **IMPOSE FINANCIAL OBLIGATIONS UPON THE**
15 **OWNER OF THE PROPERTY, INCLUDING AN**
16 **OBLIGATION TO PAY ASSESSMENTS OF THE**
17 **ASSOCIATION. IF THE OWNER DOES NOT PAY**
18 **THESE ASSESSMENTS, THE ASSOCIATION**
19 **COULD PLACE A LIEN ON THE PROPERTY AND**
20 **POSSIBLY SELL IT TO PAY THE DEBT. THE**
21 **DECLARATION, BYLAWS, AND RULES AND**
22 **REGULATIONS OF THE COMMUNITY MAY**
23 **PROHIBIT THE OWNER FROM MAKING**
24 **CHANGES TO THE PROPERTY WITHOUT AN**
25 **ARCHITECTURAL REVIEW BY THE**
26 **ASSOCIATION (OR A COMMITTEE OF THE**
27 **ASSOCIATION) AND THE APPROVAL OF THE**

1 ~~ASSOCIATION. PURCHASERS~~ ASSOCIATION.
2 THE DECLARATION FOR THE COMMUNITY OR
3 THE BYLAWS OR RULES AND REGULATIONS OF
4 THE ASSOCIATION MAY REQUIRE THAT
5 CERTAIN DISPUTES BE RESOLVED BY
6 MANDATORY, BINDING ARBITRATION.
7 PURCHASERS OF PROPERTY WITHIN THE
8 COMMON INTEREST COMMUNITY SHOULD
9 INVESTIGATE THE FINANCIAL OBLIGATIONS
10 OF MEMBERS OF THE ASSOCIATION.
11 PURCHASERS SHOULD CAREFULLY READ THE
12 DECLARATION FOR THE COMMUNITY AND THE
13 BYLAWS AND RULES AND REGULATIONS OF
14 THE ASSOCIATION.

15 **SECTION 5. Effective date - applicability.** (1) Except as
16 otherwise provided in subsection (2) of this section, this act takes effect
17 upon passage.

18 (2) Section 4 of this act takes effect January 1, 2016, and applies
19 to contracts executed on or after that date.

20 **SECTION 6. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.