

Colorado Legislative Council Staff Fiscal Note

**STATE
FISCAL IMPACT**

Drafting Number: LLS 15-0079	Date: February 19, 2015
Prime Sponsor(s): Sen. Scheffel; Ulibarri Rep. DelGrosso; Singer	Bill Status: Senate Business, Labor, and Technology
	Fiscal Analyst: Erin Reynolds (303-866-4146)

BILL TOPIC: HOA CONSTRUCTION DEFECT LAWSUIT APPROVAL TIMELINES

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue		
State Expenditures	Minimal workload reduction. See State Expenditures section.	
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill requires that a homeowners' association (HOA) use mediation or third-party arbitration before a lawsuit can be filed in disputes involving construction defects against a development party. If an HOA had bylaws that required third-party mediation or arbitration at the time of construction, the HOA must adhere to that original policy in construction defect cases. The mediation or arbitration must take place at a mutually agreeable location in the judicial district in which the community is located, and the mediator or arbitrator must:

- be a neutral third party;
- make certain disclosures before being selected; and
- be selected pursuant to the HOA's governing documents, if possible; or in accordance with the uniform arbitration act, the federal arbitration act, or by another means as specified in the state's dispute resolution act; or, as a last resort, by the appointment of the district court in the HOA's jurisdiction.

In addition to submitting to mediation or arbitration before filing a construction defect lawsuit, the HOA's executive board must send advance notice to all unit owners, together with a disclosure of the projected costs, duration, and financial impact of the litigation, including the financial impact of not moving forward with the claim and on units in the HOA that have no alleged defects. The HOA's executive board must also obtain the written consent of a majority of the unit owners.

Prior to the purchase and sale of property in a common interest community, the bill requires that, effective January 1, 2016, a disclosure notice inform the purchaser that he or she is required to become a member of the HOA, and be subject to its rules and bylaws.

The bill also adds notice requirements for lawsuits initiated by HOAs in matters other than construction defect claims. Specifically, the HOA must provide notice to unit owners at least 30 days prior to commencement of the legal action.

State Expenditures

The bill is expected to result in a minimal workload reduction for the trial courts of the Judicial Department. The Judicial Department processes approximately 150 to 200 construction defect cases annually. Because the bill requires HOAs to pursue alternative dispute resolution prior to filing a construction defect claim with the district court, it is assumed that mediation or arbitration will result in some cases being settled outside of court. While it is possible that additional hearings will take place to assess compliance with the provisions of the bill, these instances are expected to be minimal.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and, with one exception, applies to causes of action accruing on or after that date. The disclosure requirement takes effect January 1, 2016, and applies to contracts executed on or after that date.

State and Local Government Contacts

Judicial
Secretary of State

Local Affairs
Counties

Regulatory Agencies
Municipalities