

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 18, 2015
Date

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB15-177 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 4, line 5, strike "MEDIATION OR" and substitute
2 "MEDIATION, BY".

3 Page 4, strike lines 14 through 23 and substitute:

4 "(b) (I) A CONSTRUCTION DEFECT CLAIM AGAINST A DEVELOPMENT
5 PARTY MUST BE SUBMITTED TO A MEDIATION OR ARBITRATION SERVICE
6 PROVIDER THAT IS QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION
7 ACT, PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S. THE PARTIES SHALL
8 COOPERATE TO SELECT A MEDIATION OR ARBITRATION SERVICE PROVIDER
9 REASONABLY ACCEPTABLE TO ALL PARTIES TO THE CONSTRUCTION DEFECT
10 CLAIM, WITH A PREFERENCE GIVEN TO THE MEDIATION OR ARBITRATION
11 SERVICE PROVIDER SPECIFIED IN THE DECLARATION IF THAT PROVIDER IS
12 QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION ACT, PART 2 OF
13 ARTICLE 22 OF TITLE 13, C.R.S. IF NO ARBITRATION SERVICE PROVIDER IS
14 SPECIFIED IN THE GOVERNING DOCUMENTS OR IF THE".

15 Page 6, line 19, strike "MUST BE".

16 Page 6, strike lines 20 through 22.

17 Page 6, strike line 23 and substitute "~~a general description of the~~
18 ~~following~~ MUST CONTAIN:".

1 Page 6, strike lines 24 through 27.

2 Strike page 7.

3 Page 8, strike lines 1 through 3 and substitute:

4 "(I) A GENERAL DESCRIPTION OF the nature of the ~~action~~
5 CONSTRUCTION DEFECT CLAIM and the relief sought; and

6 (II) A GOOD-FAITH ESTIMATE OF THE BENEFITS AND RISKS
7 INVOLVED, INCLUDING the expenses and fees that the executive board
8 anticipates will be incurred BY THE ASSOCIATION in prosecuting the ~~action~~
9 CONSTRUCTION DEFECT CLAIM, IN SUBSTANTIALLY THE FOLLOWING FORM:

10 1. IF THE ASSOCIATION DOES NOT FILE A CLAIM BY
11 _____ [DATE], THE CLAIM CANNOT BE FILED AT ALL
12 UNDER THE APPLICABLE STATUTE OF LIMITATION, STATUTE
13 OF REPOSE, OR BOTH.

14 2. IF THE ASSOCIATION PREVAILS, THE EXECUTIVE
15 BOARD EXPECTS THAT THE ASSOCIATION MAY RECOVER
16 FROM THE DEFENDANT(S) AN AMOUNT BETWEEN \$ _____
17 AND \$ _____.

18 3. THE EXECUTIVE BOARD INTENDS TO ENTER INTO
19 A CONTINGENCY FEE ARRANGEMENT WITH THE ATTORNEYS
20 REPRESENTING THE ASSOCIATION, UNDER WHICH, OF THE
21 AMOUNT THE ASSOCIATION RECOVERS FROM THE
22 DEFENDANT(S), THE ATTORNEYS WILL BE PAID A
23 CONTINGENCY FEE EQUAL TO _____ PERCENT OF THE (NET)
24 (GROSS) RECOVERY. THE EXECUTIVE BOARD ESTIMATES
25 THAT, IN ADDITION TO ATTORNEY FEES, THE ASSOCIATION
26 WILL INCUR COSTS TOTALING APPROXIMATELY \$ _____
27 FOR CONSULTANTS, EXPERT WITNESSES, DEPOSITIONS,
28 FILING FEES, AND OTHER EXPENSES OF LITIGATION.

29 4. IF THE ASSOCIATION MAKES A CLAIM AND DOES
30 NOT WIN, THE EXECUTIVE BOARD EXPECTS THAT THE
31 ASSOCIATION WILL HAVE TO PAY FOR ITS OWN ATTORNEY
32 FEES, CONSULTANT FEES, EXPERT WITNESS FEES, AND OTHER
33 COSTS (THE AMOUNT LISTED IN PARAGRAPH 3 ABOVE) PLUS
34 THE DEFENDANT'S CONSULTANT FEES, EXPERT WITNESS
35 FEES, AND COURT COSTS.

36 5. IF THE ASSOCIATION DOES NOT RECOVER FROM
37 THE DEFENDANT(S), IT MAY HAVE TO PAY TO REPAIR OR
38 REPLACE THE CLAIMED DEFECTIVE CONSTRUCTION WORK. IN

1 ADDITION, THE ASSOCIATION MAY HAVE TO PAY THE
2 DEFENDANTS' ATTORNEY FEES.

3 6. UNTIL THE DEFECTIVE CONSTRUCTION WORK IS
4 REPAIRED OR REPLACED, OR UNTIL THE CONSTRUCTION
5 DEFECT CLAIM IS CONCLUDED, THE MARKET VALUE OF THE
6 AFFECTED UNITS WILL BE ADVERSELY AFFECTED.

7 7. UNTIL THE DEFECTIVE CONSTRUCTION WORK IS
8 REPAIRED OR REPLACED, OR UNTIL THE CLAIM IS
9 CONCLUDED, OWNERS OF THE AFFECTED UNITS WILL HAVE
10 DIFFICULTY REFINANCING AND PROSPECTIVE BUYERS OF THE
11 AFFECTED UNITS WILL HAVE DIFFICULTY OBTAINING
12 FINANCING. IN ADDITION, CERTAIN FEDERAL UNDERWRITING
13 STANDARDS OR REGULATIONS PREVENT REFINANCING OR
14 OBTAINING A NEW LOAN IN PROJECTS WHERE A
15 CONSTRUCTION DEFECT IS CLAIMED. IN ADDITION, CERTAIN
16 LENDERS AS A MATTER OF POLICY WILL NOT REFINANCE OR
17 PROVIDE A NEW LOAN IN PROJECTS WHERE A CONSTRUCTION
18 DEFECT IS CLAIMED."

19 Page 8, line 12, strike "THE WRITTEN CONSENT OF THE" and substitute
20 "THE SIGNED, WRITTEN CONSENT FROM".

21 Page 8, line 15, strike "AFTER".

22 Page 8, strike lines 16 and 17 and substitute "WHICH WRITTEN CONSENT
23 ACKNOWLEDGES THAT THE OWNER HAS RECEIVED THE NOTICE REQUIRED
24 UNDER THIS SUBSECTION (2) AND APPROVES OF THE EXECUTIVE BOARD'S
25 PROPOSED ACTION."

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