

Second Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0901.01 Jery Payne x2157

SENATE BILL 24-112

---

SENATE SPONSORSHIP

**Lundeen**, Baisley, Gardner, Kirkmeyer, Liston, Pelton B., Pelton R., Rich, Simpson, Smallwood, Van Winkle, Will

HOUSE SPONSORSHIP

(None),

---

Senate Committees

Local Government & Housing

House Committees

---

A BILL FOR AN ACT

101 CONCERNING THE PROCEDURES GOVERNING CONSTRUCTION DEFECT  
102 ACTIONS.

---

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://leg.colorado.gov>.)*

**Section 1** of the bill adds disclaimers to the "Construction Defect Action Reform Act" that:

- Are not intended to impose an obligation upon construction professionals to provide an express or implied warranty;
- Apply to implied warranty claims; and
- Do not amend or change the terms of or limitation upon an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing law.  
Dashes through the words or numbers indicate deletions from existing law.

express or implied warranty.

The bill states that a construction professional is not vicariously liable for the acts or omissions of a licensed design professional for any construction defects.

Under current law regarding common interest communities, a unit owners' association (association) must follow a process to obtain the approval of a majority of the unit owners before initiating a construction defect action (action). The approval process:

- Requires that a meeting be held to consider whether or not to bring the action (meeting);
- Requires the association to give the unit owners information about the proposed action and certain notices and disclosures before the meeting;
- Allows the association to amend or supplement the proposed action after the meeting; and
- Allows the association to omit nonresponsive votes from the total vote count, but allows construction professionals to challenge whether the association made diligent efforts to contact the nonresponsive unit owners.

In connection with this process, **section 2**:

- Requires the association to give notice to unit owners and reobtain unit owner approval to amend or supplement a proposed action after the meeting;
- Raises the number of unit owners who need to approve the action from a majority to a two-thirds majority;
- Requires a unit owner to sign the unit owner's vote;
- Requires the association to give the construction professionals a list of nonresponsive unit owners; and
- When unit owners' nonresponsiveness is challenged in court:
  - Requires the court to stay the action against the construction professionals and requires the notification and voting process to be performed again unless the court holds that the association diligently contacted the unit owners; and
  - Requires the association to disclose to the construction professionals all information relevant to the unit owners' nonresponsiveness within 21 days after the challenge has been filed.

---

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 13-20-807 as

1 follows:

2 **13-20-807. Express warranty - not affected.** (1) ~~The provisions~~  
3 of This part 8 ~~are~~ IS not intended to:

4 (a) Abrogate or limit the provisions of ~~any~~ AN express warranty  
5 or the obligations of the provider of ~~such~~ THE warranty; OR

6 (b) IMPOSE A STATUTORY OBLIGATION UPON A CONSTRUCTION  
7 PROFESSIONAL TO PROVIDE AN EXPRESS OR IMPLIED WARRANTY.

8 (2) (a) ~~The provisions of This part 8 shall apply to those~~  
9 ~~circumstances where~~ APPLIES TO an action is filed asserting one or more  
10 claims for relief, including a claim for breach of AN EXPRESS OR IMPLIED  
11 warranty; except that, in ~~any~~ such AN action, section 13-20-806 (7) ~~shall~~  
12 DOES not apply to A breach of express OR IMPLIED warranty claims except  
13 to the extent that ~~provisions~~ A PROVISION of the express warranty ~~purport~~  
14 ~~to waive or limit~~ WAIVES OR LIMITS claims for relief other than the breach  
15 of express warranty claim.

16 (b) EXCEPT AS PROVIDED IN SUBSECTION (2)(a) OF THIS SECTION,  
17 THIS PART 8 DOES NOT AMEND OR CHANGE THE TERMS OF OR LIMITATIONS  
18 UPON AN EXPRESS OR IMPLIED WARRANTY.

19 (c) ~~The provisions of This part 8 shall~~ DOES not ~~be deemed to~~  
20 require a claimant who is the beneficiary of an express warranty to  
21 comply with the notice provisions of section 13-20-803.5 to request  
22 ordinary warranty service in accordance with the terms of ~~such~~ THE  
23 warranty. A claimant who requires warranty service ~~shall~~ MUST comply  
24 with the provisions of ~~such~~ THE warranty.

25 (3) A CONSTRUCTION PROFESSIONAL IS NOT VICARIOUSLY LIABLE  
26 FOR THE ACTS OR OMISSIONS OF A LICENSED DESIGN PROFESSIONAL IN  
27 CONNECTION WITH ANY CLAIM, CAUSE OF ACTION, OR DEMAND IF THE

1 CLAIM, CAUSE OF ACTION, OR DEMAND ARISES FROM OR IN CONNECTION  
2 WITH THE ASSERTION OF CLAIMS OF CONSTRUCTION DEFECTS.

3 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-303.5,  
4 **amend** (1)(c)(V), (1)(d)(I), (1)(d)(II)(B), and (1)(d)(III)(D) as follows:

5 **38-33.3-303.5. Construction defect actions - disclosure -**  
6 **approval by unit owners - definitions - exemptions.** (1) (c) **Meeting**  
7 **to consider commencement of construction defect action - disclosures**  
8 **- required terms.** (V) ~~The substance of a proposed construction defect~~  
9 ~~action may be amended or supplemented after the meeting, but an~~  
10 ~~amended or supplemented claim does not extend the voting period. The~~  
11 ~~executive board shall give notice to unit owners of any amended or~~  
12 ~~supplemented claim and shall maintain records of its communications~~  
13 ~~with unit owners. Owner approval pursuant to subsection (1)(d) of this~~  
14 ~~section is not required for amendments or supplements to a construction~~  
15 ~~defect action made after the notice pursuant to this subsection (1)(c) is~~  
16 **sent** TO AMEND OR SUPPLEMENT THE SUBSTANCE OF A PROPOSED  
17 CONSTRUCTION DEFECT ACTION AFTER THE MEETING HELD IN  
18 ACCORDANCE WITH SUBSECTION (1)(c)(II) OF THIS SECTION, THE  
19 ASSOCIATION MUST GIVE NOTICE TO UNIT OWNERS OF ANY AMENDED OR  
20 SUPPLEMENTED CLAIM AND REOBTAIN UNIT OWNER APPROVAL IN  
21 ACCORDANCE WITH THIS SECTION FOR EACH AMENDMENT OR SUPPLEMENT.

22 (d) **Approval by unit owners - procedures.**

23 (I) (A) Notwithstanding any provision of law or any requirement in the  
24 governing documents, the executive board may initiate the construction  
25 defect action only if authorized within the voting period by owners of  
26 units to which a TWO-THIRDS majority of votes in the association are  
27 allocated. ~~Such~~ THE approval is not required for an association to proceed

1 with a construction defect action if the alleged construction defect  
2 pertains ONLY to a facility that is intended and used for nonresidential  
3 purposes and if the cost to repair the alleged defect does not exceed fifty  
4 thousand dollars. ~~Such~~ THE approval is not required for an association to  
5 proceed with a construction defect action when the association is the  
6 DIRECT contracting party for the performance of labor or purchase of  
7 services or materials.

8 (B) Notwithstanding any other provision of law, ~~an owner's vote~~  
9 ~~shall be submitted~~ A UNIT OWNER SHALL SUBMIT A VOTE only once. THE  
10 UNIT OWNER'S VOTE MUST CONTAIN THE OWNER'S SIGNATURE ON THE  
11 NOTICE REQUIRED IN SUBSECTION (1)(c)(III) OF THIS SECTION and may be  
12 obtained in any SIGNED AND written format confirming the UNIT owner's  
13 vote to approve or reject the proposed construction defect action. The  
14 association shall maintain a record of all votes until the conclusion of the  
15 construction defect action, including all appeals, if any.

16 (II) (B) All statutes of limitation and repose applicable to claims  
17 based on defects described with reasonable specificity in the notice,  
18 which may be supplemented or amended pursuant to subsection  
19 (1)(c)(IV) of this section, are tolled from the date the notice sent pursuant  
20 to subsection (1)(c) of this section is mailed until either the ninety-day  
21 voting and disclosure period ends or until the association determines BY  
22 VERIFIED VOTE COUNT that the construction defect action is either  
23 approved or disapproved, IN ACCORDANCE WITH THIS SECTION, INCLUDING  
24 ANY CHALLENGES CONCERNING A NONRESPONSIVE UNIT OWNER,  
25 whichever occurs first.

26 (III) **Vote count - exclusions.** For purposes of calculating the  
27 required majority vote under this subsection (1)(d) only, the following

1 votes are excluded:

2 (D) Any votes allocated to units owned by owners who are  
3 ~~deemed nonresponsive. If the status of the nonresponsive unit owners is~~  
4 ~~challenged in court, the court shall consider whether the executive board~~  
5 ~~has made diligent efforts to contact the unit owner regarding the vote and~~  
6 ~~may consider: Whether a mailing was returned as undeliverable; whether~~  
7 ~~the owner appears to be residing at the unit; and whether the association~~  
8 ~~has used other contact information, such as an electronic mail address or~~  
9 ~~telephone number for the owner~~ WITHIN SEVEN DAYS AFTER  
10 DETERMINING THAT A CONSTRUCTION DEFECT ACTION HAS BEEN  
11 APPROVED, THE ASSOCIATION MUST SEND A LIST OF ALL UNIT OWNERS  
12 THAT WERE NONRESPONSIVE TO THE CONSTRUCTION PROFESSIONAL. THE  
13 STATUS AND EXCLUSION OF ANY NONRESPONSIVE UNIT OWNERS MAY BE  
14 CHALLENGED IN COURT BY A CONSTRUCTION PROFESSIONAL, WITHOUT  
15 REGARD TO ANY ARBITRATION PROVISION GOVERNING THE CLAIM. UPON  
16 THE CHALLENGE BEING FILED, THE COURT SHALL ISSUE AN ORDER STAYING  
17 THE ACTION AGAINST THE CONSTRUCTION PROFESSIONAL AND REQUIRE  
18 THE NOTIFICATION AND VOTING PROCESS UNDER THIS SECTION TO BE  
19 PERFORMED AGAIN UNLESS THE COURT HOLDS THAT THE ASSOCIATION  
20 UNDERTOOK DILIGENT AND GOOD FAITH EFFORTS TO LOCATE AND OBTAIN  
21 THE VOTE OF EACH NONRESPONSIVE UNIT OWNER. IN MAKING THE  
22 DETERMINATION, THE COURT SHALL CONSIDER WHETHER A MAILING WAS  
23 RETURNED AS UNDELIVERABLE, WHETHER THE UNIT OWNER APPEARS TO  
24 BE RESIDING AT THE UNIT, AND WHETHER THE ASSOCIATION HAS USED  
25 OTHER CONTACT INFORMATION, SUCH AS AN E-MAIL ADDRESS OR A  
26 TELEPHONE NUMBER, TO CONTACT THE UNIT OWNER. A REPRESENTATIVE  
27 OF THE ASSOCIATION SHALL DISCLOSE, UNDER OATH, TO THE COURT AND

1 THE CONSTRUCTION PROFESSIONAL, ALL INFORMATION RELEVANT TO THIS  
2 DETERMINATION WITHIN TWENTY-ONE DAYS AFTER A CHALLENGE HAS  
3 BEEN FILED BY THE CONSTRUCTION PROFESSIONAL. THE CONSTRUCTION  
4 PROFESSIONAL IS ENTITLED TO SUBMIT A WRITTEN BRIEF SUMMARIZING ITS  
5 ARGUMENT AS TO WHY A NONRESPONSIVE UNIT OWNER SHOULD NOT BE  
6 DEEMED NONRESPONSIVE. THE COURT SHALL DECIDE THE MATTER BASED  
7 ON THE EVIDENCE IN THE RECORD.

8 **SECTION 3. Act subject to petition - effective date -**  
9 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
10 the expiration of the ninety-day period after final adjournment of the  
11 general assembly; except that, if a referendum petition is filed pursuant  
12 to section 1 (3) of article V of the state constitution against this act or an  
13 item, section, or part of this act within such period, then the act, item,  
14 section, or part will not take effect unless approved by the people at the  
15 general election to be held in November 2024 and, in such case, will take  
16 effect on the date of the official declaration of the vote thereon by the  
17 governor.

18 (2) This act applies to legal actions commenced, including the  
19 requirements needed to be completed to bring a legal action, on or after  
20 the applicable effective date of this act.