

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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.

SENATE
3rd Reading Unamended
April 14, 2015

SENATE
Amended 2nd Reading
April 10, 2015

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, 13-22-223, amend**
3 **(1.5) as follows:**

4 **13-22-223. Vacating award. (1.5) Notwithstanding the**
5 **provisions of subsection (1) of this section, the fact that the relief was**
6 **such that it could not or would not be granted by a court of law or equity**
7 **is not grounds for vacating or refusing to confirm the award; EXCEPT**
8 **THAT, IN THE ARBITRATION OF AN ACTION AS DEFINED IN SECTION**
9 **13-20-802.5 (9.5), C.R.S., THE ARBITRATOR SHALL FOLLOW THE**
10 **SUBSTANTIVE LAW OF COLORADO WITH REGARD TO ANY REMEDY**
11 **GRANTED, AND IF THE REMEDY IS SUBSTANTIALY AFFECTED BY THE**
12 **ARBITRATOR'S FAILURE TO FOLLOW THE SUBSTANTIVE LAW OF COLORADO,**
13 **THE COURT MAY VACATE OR REFUSE TO CONFIRM THE AWARD ON THAT**

1 BASIS.

2 **SECTION 2.** 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
14 THE COMMON INTEREST COMMUNITY.

15 (13.5) "DEVELOPMENT PARTY" MEANS AN ARCHITECT,
16 CONTRACTOR, SUBCONTRACTOR, DEVELOPER, DECLARANT OR AFFILIATES
17 OF DECLARANT, BUILDER, BUILDER VENDOR, ENGINEER, OR INSPECTOR
18 PERFORMING OR FURNISHING THE DESIGN, SUPERVISION, INSPECTION,
19 CONSTRUCTION, OR OBSERVATION OF THE CONSTRUCTION OF ANY
20 IMPROVEMENT TO REAL PROPERTY THAT IS PART OF THE COMMON
21 INTEREST COMMUNITY OR ANY OTHER PARTY RESPONSIBLE FOR ANY PART
22 OF THE DESIGN OR CONSTRUCTION OF ANY PORTION OF THE COMMON
23 INTEREST COMMUNITY, OR ANY OF SUCH PARTIES' AFFILIATES, OR THE
24 OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYERS
25 OR SERVANTS OF ANY OF THEM.

26 (16.3) "GOVERNING DOCUMENTS" MEANS THE DECLARATION,
27 ARTICLES OF INCORPORATION, BYLAWS, RULES, REGULATIONS, POLICIES,

1 AND PROCEDURES OF A COMMON INTEREST COMMUNITY.

2 **SECTION 3.** 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 GOVERNING DOCUMENTS OF A COMMON INTEREST COMMUNITY CONTAIN
8 A REQUIREMENT THAT CONSTRUCTION DEFECT CLAIMS BE SUBMITTED TO
9 MEDIATION OR ARBITRATION, THAT REQUIREMENT REPRESENTS A
10 COMMITMENT ON THE PART OF THE UNIT OWNERS AND THE ASSOCIATION
11 ON WHICH DEVELOPMENT PARTIES ARE ENTITLED TO RELY. THEREFORE, A
12 LATER AMENDMENT TO THE GOVERNING DOCUMENTS THAT REMOVES OR
13 AMENDS THE MEDIATION OR ARBITRATION REQUIREMENT SHOULD NOT
14 APPLY TO CLAIMS THAT ARE DESCRIBED IN THE MEDIATION OR
15 ARBITRATION REQUIREMENTS OF THE GOVERNING DOCUMENTS.

16 (3) (a) The declaration, bylaws, or rules GOVERNING DOCUMENTS
17 of the association COMMON INTEREST COMMUNITY may specify situations
18 in which disputes shall be resolved by binding arbitration under MUST BE
19 SUBMITTED TO A MUTUALLY AGREED-UPON MEDIATOR OR, IN THE CASE OF
20 AN ARBITRATION SERVICE PROVIDER, AN ARBITRATION SERVICE PROVIDER
21 QUALIFIED PURSUANT TO the uniform arbitration act, part 2 of article 22
22 of title 13, C.R.S., OR BY ANOTHER MEANS OF ALTERNATIVE DISPUTE
23 RESOLUTION UNDER THE FEDERAL ARBITRATION ACT, 9 U.S.C. SECS. 1 TO
24 307, or by another means of alternative dispute resolution under the
25 "Dispute Resolution Act", part 3 of article 22 of title 13, C.R.S. IF THOSE
26 SITUATIONS INCLUDE A CONSTRUCTION DEFECT CLAIM AGAINST A
27 DEVELOPMENT PARTY, A SUBSEQUENT AMENDMENT TO THE GOVERNING

1 DOCUMENTS THAT REMOVES OR AMENDS THE MEDIATION REQUIREMENT
2 IS NOT EFFECTIVE WITH REGARD TO A CONSTRUCTION DEFECT CLAIM.

3 (b) (I) A CONSTRUCTION DEFECT CLAIM AGAINST A DEVELOPMENT
4 PARTY MUST BE RESOLVED BY A QUALIFIED MEDIATOR OR, IN THE CASE OF
5 AN ARBITRATION SERVICE PROVIDER, AN ARBITRATION SERVICE PROVIDER
6 QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION ACT, PART 2 OF
7 ARTICLE 22 OF TITLE 13, C.R.S. THE PARTIES SHALL COOPERATE TO
8 SELECT A MUTUALLY AGREED-UPON MEDIATOR OR, IN THE CASE OF AN
9 ARBITRATION SERVICE PROVIDER, AN ARBITRATION SERVICE PROVIDER
10 QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION ACT, PART 2 OF
11 ARTICLE 22 OF TITLE 13, C.R.S., WITH A PREFERENCE GIVEN TO THE
12 MEDIATOR OR ARBITRATION SERVICE PROVIDER SPECIFIED IN THE
13 DECLARATION IF THAT PROVIDER IS QUALIFIED PURSUANT TO THE UNIFORM
14 ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S. IF NO
15 ARBITRATION SERVICE PROVIDER IS SPECIFIED IN THE GOVERNING
16 DOCUMENTS OR IF THE PARTIES ARE UNABLE TO AGREE UPON A MEDIATION
17 OR ARBITRATION SERVICE PROVIDER, THEN, WITH RESPECT TO MEDIATION,
18 THE PARTIES MAY PETITION THE DISTRICT COURT FOR THE JUDICIAL
19 DISTRICT IN WHICH THE COMMON INTEREST COMMUNITY IS LOCATED TO
20 APPOINT A MEDIATOR AND, WITH RESPECT TO ARBITRATION, THE
21 ARBITRATION SERVICE PROVIDER WILL BE SELECTED IN ACCORDANCE WITH
22 THE UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE 22 OF TITLE 13,
23 C.R.S.

24 (II) NOTWITHSTANDING ANY PROVISION OF THE GOVERNING
25 DOCUMENTS TO THE CONTRARY, A MEDIATOR OR ARBITRATOR SELECTED
26 TO PRESIDE OVER THE CONSTRUCTION DEFECT CLAIM MUST BE A NEUTRAL
27 THIRD PARTY AS PROVIDED IN SECTION 13-22-211 (2), C.R.S. BEFORE

1 BEING SELECTED TO PRESIDE OVER THE CONSTRUCTION DEFECT CLAIM, A
2 PROPOSED MEDIATOR OR ARBITRATOR SHALL MAKE THE DISCLOSURES
3 REQUIRED BY SECTION 13-22-212, C.R.S.

4 (III) NOTWITHSTANDING ANY PROVISION OF THE GOVERNING
5 DOCUMENTS TO THE CONTRARY, UNLESS THE PARTIES OTHERWISE AGREE,
6 THE MEDIATION OR ARBITRATION MUST BE HELD AT A MUTUALLY
7 AGREEABLE LOCATION WITHIN THE JUDICIAL DISTRICT IN WHICH THE
8 COMMON INTEREST COMMUNITY IS LOCATED.

9 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-303.5,
10 **amend** (1) and (2); and **add** (1.5) as follows:

11 **38-33.3-303.5. Commencement of litigation by executive board**
12 **- notice to unit owners - disclosure of projected costs - consent.**

13 (1) ~~(a) In the event~~ BEFORE the executive board, pursuant to section
14 38-33.3-302 (1) (d), institutes ~~an action asserting defects in the~~
15 ~~construction of five or more units, the provisions of this section shall~~
16 ~~apply. For purposes of this section, "action" shall have the same meaning~~
17 ~~as set forth in section 13-20-803 (1), C.R.S.~~ ANY LEGAL ACTION,
18 INCLUDING A CONSTRUCTION DEFECT CLAIM,

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

21 (1.5) AS A CONDITION PRECEDENT TO ANY CONSTRUCTION DEFECT
22 CLAIM, THE PARTIES MUST SUBMIT THE MATTER TO MEDIATION BEFORE A
23 NEUTRAL THIRD PARTY MUTUALLY SELECTED BY THE PARTIES TO THE
24 CONSTRUCTION DEFECT CLAIM. IF THE PARTIES ARE NOT ABLE TO AGREE
25 UPON A MEDIATOR, THEY MAY USE AN ALTERNATIVE SELECTION METHOD
26 SPECIFIED IN THE GOVERNING DOCUMENTS OR, IF NO ALTERNATIVE
27 SELECTION METHOD IS SPECIFIED, MAY PETITION THE DISTRICT COURT IN

1 THE JURISDICTION IN WHICH THE COMMON INTEREST COMMUNITY IS
2 LOCATED TO APPOINT A MEDIATOR FOR THE CONSTRUCTION DEFECT
3 CLAIM.

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

11 (b) WITH RESPECT TO A CONSTRUCTION DEFECT CLAIM, the notice
12 required by paragraph (a) of this subsection (2) ~~shall state~~ == a general
13 description of the following MUST CONTAIN:

14

15 ==
16 (I) A GENERAL DESCRIPTION OF the nature of the action
17 CONSTRUCTION DEFECT CLAIM and the relief sought; and

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

22 1. IF THE ASSOCIATION DOES NOT FILE A CLAIM BY
23 [DATE], THE CLAIM CANNOT BE FILED AT ALL
24 UNDER THE APPLICABLE STATUTE OF LIMITATION, STATUTE
25 OF REPOSE, OR BOTH.

26 2. IF THE ASSOCIATION PREVAILS, THE EXECUTIVE
27 BOARD EXPECTS THAT THE ASSOCIATION MAY RECOVER
FROM THE DEFENDANT(S) AN AMOUNT BETWEEN \$

1 AND \$_____.

2 3. THE EXECUTIVE BOARD INTENDS TO ENTER INTO
3 A CONTINGENCY FEE ARRANGEMENT WITH THE ATTORNEYS
4 REPRESENTING THE ASSOCIATION, UNDER WHICH, OF THE
5 AMOUNT THE ASSOCIATION RECOVERS FROM THE
6 DEFENDANT(S), THE ATTORNEYS WILL BE PAID A
7 CONTINGENCY FEE EQUAL TO _____ PERCENT OF THE (NET)
8 (GROSS) RECOVERY. THE EXECUTIVE BOARD ESTIMATES
9 THAT, IN ADDITION TO ATTORNEY FEES, THE ASSOCIATION
10 WILL INCUR COSTS TOTALING APPROXIMATELY \$
11 FOR CONSULTANTS, EXPERT WITNESSES, DEPOSITIONS,
12 FILING FEES, AND OTHER EXPENSES OF LITIGATION.

13 4. IF THE ASSOCIATION MAKES A CLAIM AND DOES
14 NOT WIN, THE EXECUTIVE BOARD EXPECTS THAT THE
15 ASSOCIATION WILL HAVE TO PAY FOR ITS OWN ATTORNEY
16 FEES, CONSULTANT FEES, EXPERT WITNESS FEES, AND OTHER
17 COSTS (THE AMOUNT LISTED IN PARAGRAPH 3 ABOVE) PLUS
18 THE DEFENDANT'S CONSULTANT FEES, EXPERT WITNESS
19 FEES, AND COURT COSTS.

20 5. IF THE ASSOCIATION DOES NOT RECOVER FROM
21 THE DEFENDANT(S), IT MAY HAVE TO PAY TO REPAIR OR
22 REPLACE THE CLAIMED DEFECTIVE CONSTRUCTION WORK. IN
23 ADDITION, THE ASSOCIATION MAY HAVE TO PAY THE
24 DEFENDANTS' ATTORNEY FEES.

25 6. UNTIL THE CLAIMED DEFECTIVE CONSTRUCTION
26 WORK IS REPAIRED OR REPLACED, OR UNTIL THE
27 CONSTRUCTION DEFECT CLAIM IS CONCLUDED, THE MARKET

1 VALUE OF THE AFFECTED UNITS WILL BE ADVERSELY
2 AFFECTED.

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

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

16 (I) THE NOTICE REQUIRED UNDER PARAGRAPH (a) OF THIS
17 SUBSECTION (2) MUST BE SENT AT LEAST SIXTY DAYS BEFORE SERVICE OF
18 THE NOTICE OF CLAIM UNDER SECTION 13-20-803.5, == C.R.S.; AND

19 (II) THE CONSTRUCTION DEFECT CLAIM IS NOT AUTHORIZED
20 UNLESS THE EXECUTIVE BOARD OBTAINS THE SIGNED, WRITTEN CONSENT
21 FROM OWNERS, OTHER THAN THE DECLARANT, OF UNITS TO WHICH AT
22 LEAST A MAJORITY OF THE TOTAL VOTES, EXCLUDING VOTES ALLOCATED
23 TO UNITS OWNED BY THE DECLARANT, IN THE ASSOCIATION ARE
24 ALLOCATED, == WHICH WRITTEN CONSENT ACKNOWLEDGES THAT THE
25 OWNER HAS RECEIVED THE NOTICE REQUIRED UNDER THIS SUBSECTION (2)
26 AND APPROVES OF THE EXECUTIVE BOARD'S PROPOSED ACTION.

27 (d) WITH RESPECT TO ANY LEGAL ACTION OTHER THAN A

1 CONSTRUCTION DEFECT CLAIM DESCRIBED IN PARAGRAPH (c) OF THIS
2 SUBSECTION (2), THE NOTICE REQUIRED UNDER PARAGRAPH (a) OF THIS
3 SUBSECTION (2) MUST BE SENT AT LEAST THIRTY DAYS BEFORE SERVICE OF
4 THE SUMMONS AND COMPLAINT.

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

7 **38-35.7-102. Disclosure - common interest community -**
8 **obligation to pay assessments - requirement for architectural**
9 **approval.** (1) On and after January 1, ~~2007~~ 2016, every contract for the
10 purchase and sale of residential real property in a common interest
11 community shall contain a disclosure statement in bold-faced type that is
12 clearly legible and in substantially the following form:

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

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

24 **SECTION 6. Effective date - applicability.** (1) Except as
25 otherwise provided in subsection (2) of this section, this act takes effect
26 upon passage.

27 (2) Section 4 of this act takes effect January 1, 2016, and applies

1 to contracts executed on or after that date.

2 **SECTION 7. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.