

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

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0079.02 Duane Gall x4335

**SENATE BILL 15-177**

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**SENATE SPONSORSHIP**

**Scheffel and Ulibarri,**

**HOUSE SPONSORSHIP**

**DelGrosso and Singer,**

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**Senate Committees**

Business, Labor, & Technology

**House Committees**

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**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.**

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**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/bills summaries>.)*

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.

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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, BY 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 SUBMITTED TO A MEDIATION OR ARBITRATION SERVICE  
16 PROVIDER THAT IS QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION  
17 ACT, PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S. THE PARTIES SHALL  
18 COOPERATE TO SELECT A MEDIATION OR ARBITRATION SERVICE PROVIDER  
19 REASONABLY ACCEPTABLE TO ALL PARTIES TO THE CONSTRUCTION DEFECT  
20 CLAIM, WITH A PREFERENCE GIVEN TO THE MEDIATION OR ARBITRATION  
21 SERVICE PROVIDER SPECIFIED IN THE DECLARATION IF THAT PROVIDER IS  
22 QUALIFIED PURSUANT TO THE UNIFORM ARBITRATION ACT, PART 2 OF  
23 ARTICLE 22 OF TITLE 13, C.R.S. IF NO ARBITRATION SERVICE PROVIDER IS  
24 SPECIFIED IN THE GOVERNING DOCUMENTS OR IF THE PARTIES ARE UNABLE  
25 TO AGREE UPON A MEDIATION OR ARBITRATION SERVICE PROVIDER, THEN,  
26 WITH RESPECT TO MEDIATION, THE PARTIES MAY PETITION THE DISTRICT  
27 COURT FOR THE JUDICIAL DISTRICT IN WHICH THE COMMON INTEREST

1 COMMUNITY IS LOCATED TO APPOINT A MEDIATOR AND, WITH RESPECT TO  
2 ARBITRATION, THE ARBITRATION SERVICE PROVIDER WILL BE SELECTED IN  
3 ACCORDANCE WITH THE UNIFORM ARBITRATION ACT, PART 2 OF ARTICLE  
4 22 OF TITLE 13, C.R.S.

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

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

17 **SECTION 3.** In Colorado Revised Statutes, 38-33.3-303.5,  
18 **amend** (1) and (2); and **add** (1.5) as follows:

19 **38-33.3-303.5. Commencement of litigation by executive board**  
20 **- notice to unit owners - disclosure of projected costs - consent.**

21 (1) ~~(a) In the event~~ BEFORE the executive board, pursuant to section  
22 38-33.3-302 (1) (d), institutes ~~an action asserting defects in the~~  
23 ~~construction of five or more units, the provisions of this section shall~~  
24 ~~apply. For purposes of this section, "action" shall have the same meaning~~  
25 ~~as set forth in section 13-20-803 (1), C.R.S.~~ ANY LEGAL ACTION,  
26 INCLUDING A CONSTRUCTION DEFECT CLAIM,

27 ~~(b)~~ the executive board shall substantially comply with ~~the~~

1 ~~provisions of~~ this section.

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

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

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

- 22 == =====
- 23 (I) A GENERAL DESCRIPTION OF the nature of the action  
24 CONSTRUCTION DEFECT CLAIM and the relief sought; and
- 25 (II) A GOOD-FAITH ESTIMATE OF THE BENEFITS AND RISKS  
26 INVOLVED, INCLUDING the expenses and fees that the executive board  
27 anticipates will be incurred BY THE ASSOCIATION in prosecuting the action

1 CONSTRUCTION DEFECT CLAIM, IN SUBSTANTIALLY THE FOLLOWING FORM:

2 1. IF THE ASSOCIATION DOES NOT FILE A CLAIM BY  
3 [DATE], THE CLAIM CANNOT BE FILED AT ALL  
4 UNDER THE APPLICABLE STATUTE OF LIMITATION, STATUTE  
5 OF REPOSE, OR BOTH.

6 2. IF THE ASSOCIATION PREVAILS, THE EXECUTIVE  
7 BOARD EXPECTS THAT THE ASSOCIATION MAY RECOVER  
8 FROM THE DEFENDANT(S) AN AMOUNT BETWEEN \$  
9 AND \$.

10 3. THE EXECUTIVE BOARD INTENDS TO ENTER INTO  
11 A CONTINGENCY FEE ARRANGEMENT WITH THE ATTORNEYS  
12 REPRESENTING THE ASSOCIATION, UNDER WHICH, OF THE  
13 AMOUNT THE ASSOCIATION RECOVERS FROM THE  
14 DEFENDANT(S), THE ATTORNEYS WILL BE PAID A  
15 CONTINGENCY FEE EQUAL TO \_\_\_\_\_ PERCENT OF THE (NET)  
16 (GROSS) RECOVERY. THE EXECUTIVE BOARD ESTIMATES  
17 THAT, IN ADDITION TO ATTORNEY FEES, THE ASSOCIATION  
18 WILL INCUR COSTS TOTALING APPROXIMATELY \$  
19 FOR CONSULTANTS, EXPERT WITNESSES, DEPOSITIONS,  
20 FILING FEES, AND OTHER EXPENSES OF LITIGATION.

21 4. IF THE ASSOCIATION MAKES A CLAIM AND DOES  
22 NOT WIN, THE EXECUTIVE BOARD EXPECTS THAT THE  
23 ASSOCIATION WILL HAVE TO PAY FOR ITS OWN ATTORNEY  
24 FEES, CONSULTANT FEES, EXPERT WITNESS FEES, AND OTHER  
25 COSTS (THE AMOUNT LISTED IN PARAGRAPH 3 ABOVE) PLUS  
26 THE DEFENDANT'S CONSULTANT FEES, EXPERT WITNESS  
27 FEES, AND COURT COSTS.

1                   5. IF THE ASSOCIATION DOES NOT RECOVER FROM  
2                   THE DEFENDANT(S), IT MAY HAVE TO PAY TO REPAIR OR  
3                   REPLACE THE CLAIMED DEFECTIVE CONSTRUCTION WORK. IN  
4                   ADDITION, THE ASSOCIATION MAY HAVE TO PAY THE  
5                   DEFENDANTS' ATTORNEY FEES.

6                   6. UNTIL THE DEFECTIVE CONSTRUCTION WORK IS  
7                   REPAIRED OR REPLACED, OR UNTIL THE CONSTRUCTION  
8                   DEFECT CLAIM IS CONCLUDED, THE MARKET VALUE OF THE  
9                   AFFECTED UNITS WILL BE ADVERSELY AFFECTED.

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

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

23                  (I) THE NOTICE REQUIRED UNDER PARAGRAPH (a) OF THIS  
24                  SUBSECTION (2) MUST BE SENT AT LEAST SIXTY DAYS BEFORE SERVICE OF  
25                  THE NOTICE OF CLAIM UNDER SECTION 13-20-803.5, C.R.S., AND BEFORE  
26                  HIRING ANY EXPERTS OR CONSULTANTS, OR INCURRING OR AGREEING TO  
27                  PAY ANY EXPERT FEES OR CONSULTANT FEES, IN CONNECTION WITH THE

1 CONSTRUCTION DEFECT CLAIM; AND

2 (II) THE CONSTRUCTION DEFECT CLAIM IS NOT AUTHORIZED  
3 UNLESS THE EXECUTIVE BOARD OBTAINS THE SIGNED, WRITTEN CONSENT  
4 FROM OWNERS, OTHER THAN THE DECLARANT, OF UNITS TO WHICH AT  
5 LEAST A MAJORITY OF THE TOTAL VOTES, EXCLUDING VOTES ALLOCATED  
6 TO UNITS OWNED BY THE DECLARANT, IN THE ASSOCIATION ARE  
7 ALLOCATED, WHICH WRITTEN CONSENT ACKNOWLEDGES THAT THE  
8 OWNER HAS RECEIVED THE NOTICE REQUIRED UNDER THIS SUBSECTION (2)  
9 AND APPROVES OF THE EXECUTIVE BOARD'S PROPOSED ACTION.

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

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

17 **38-35.7-102. Disclosure - common interest community -**  
18 **obligation to pay assessments - requirement for architectural**  
19 **approval.** (1) On and after January 1, ~~2007~~ 2016, every contract for the  
20 purchase and sale of residential real property in a common interest  
21 community shall contain a disclosure statement in bold-faced type that is  
22 clearly legible and in substantially the following form:

23 **THE PROPERTY IS LOCATED WITHIN A**  
24 **COMMON INTEREST COMMUNITY AND IS**  
25 **SUBJECT TO THE DECLARATION FOR SUCH**  
26 **THE COMMUNITY. THE OWNER OF THE**  
27 **PROPERTY WILL BE REQUIRED TO BE A**

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

1           **INVESTIGATE THE FINANCIAL OBLIGATIONS**  
2           **OF MEMBERS OF THE ASSOCIATION.**  
3           **PURCHASERS SHOULD CAREFULLY READ THE**  
4           **DECLARATION FOR THE COMMUNITY AND THE**  
5           **BYLAWS AND RULES AND REGULATIONS OF**  
6           **THE ASSOCIATION.**

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

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

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