

Construction Defects Bill

HOUSE BILL 01-1166

BY REPRESENTATIVE(S) Stengel, Cadman, Decker, Jahn, Kester, Larson, Miller, Paschall, Ragsdale, Rippey, Romanoff, Snook, Stafford, and Webster;

also SENATOR(S) Fitz-Gerald, Andrews, Arnold, Cairns, Epps, Gordon, Hanna, Hernandez, Hillman, Lamborn, Matsunaka, McElhany, Musgrave, Nichol, Perlmutter, Reeves, Tate, and Teck.

Concerning actions asserting construction defect claims for property loss and damage, and, in connection therewith, creating a disclosure requirement in certain actions, restricting construction defect negligence claims, modifying the statute of limitations for certain claims, and requiring the disclosure of construction defect litigation by the executive board of a unit owners' association to the unit owners.

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

SECTION 1. Article 20 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 8 CONSTRUCTION DEFECT ACTIONS FOR PROPERTY LOSS AND DAMAGE

13-20-801. Short title. This part 8 shall be known and may be cited as the "Construction Defect Action Reform Act".

13-20-802. Legislative declaration. The general assembly hereby finds, declares, and determines that limited changes in the law are necessary and appropriate concerning actions claiming damages, indemnity, or contribution in connection with alleged construction defects resulting in property loss or damage. It is the intent of the general assembly that this part 8 apply to these types of civil actions while preserving adequate rights and remedies for property owners who bring and maintain such actions.

13-20-803. List of defects required. (1) In every action brought against any architect, contractor, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, the claimant shall file with the court and serve on the defendant an initial list of construction defects in accordance with this section. As used in this part 8, "action" means any civil action or arbitration proceeding for damages, indemnity, or contribution asserting a claim, counterclaim, cross-claim, or third-party claim for injury or loss to, or the loss of use of, any real property caused by an alleged defect in the construction of an improvement to the real property.

(2) The initial list of construction defects shall contain a description of the construction that the claimant alleges to be defective. The initial list of construction defects shall be filed with the court and served on the defendant within sixty days after the commencement of the action or within such longer period as the court in its discretion may allow.

(3) The initial list of construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant. In no event shall the court allow the case to be set for trial before the initial list of construction defects is filed and served.

(4) If a subcontractor or supplier is added as a party to an action under this section, the claimant making the claim against such subcontractor or supplier shall file with the court and serve on the defendant an initial list of construction defects in accordance with this section within sixty days after service of the complaint against the subcontractor or supplier or within such longer period as the court in its discretion may allow. In no event shall the filing of a defect list under this subsection (4) delay the setting of the trial.

13-20-804. Restriction on residential construction defect negligence claims.

(1) No negligence claim seeking damages for a residential construction defect may be asserted in an action if such claim arises from the failure to construct a residential improvement to real property in substantial compliance with an applicable building code or industry standard; except that such claim may be asserted if such failure results in one or more of the following:

(a) Actual or probable damage to real or personal property;

(b) Actual or probable loss of the use of real or personal property;

(c) Bodily injury or wrongful death; or

(d) A risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants of the residential real property.

(2) Nothing in this section shall be construed to prohibit, limit, or impair the following:

(a) The assertion of tort claims other than claims for negligence;

(b) The assertion of contract or warranty claims; or

(c) The assertion of claims that arise from the violation of any statute or ordinance other than claims for violation of a building code.

SECTION 2. 13-80-104 (l) (b), Colorado Revised Statutes, is amended to read:

13-80-104. Limitation of actions against architects, contractors, builders or builder vendors, engineers, inspectors, and others. (l) (b) (l) Except as otherwise provided in subparagraph (II) of this paragraph (b), a claim for relief arises under this section at the time the claimant or the claimant's predecessor in interest discovers or in the exercise of reasonable diligence should have discovered the physical manifestations of a defect in the improvement which ultimately causes the injury.

(II) Notwithstanding the provisions of paragraph (a) of this subsection (1), all claims, including, but not limited to indemnity or contribution, by a claimant against a person who is or may be liable to the claimant for all or part of the claimant's liability to a third person:

(A) Arise at the time the third person's claim against the claimant is settled or at the time final judgment is entered on the third person's claim against the claimant, whichever comes first; and

(B) Shall be brought within ninety days after the claims arise, and not thereafter.

SECTION 3. Part 3 of article 33.3 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

38-33.3-303.5. Construction defect actions - disclosure. (1) (a) In the event the executive board, pursuant to section [38-33.3-302](#) (1) (d), institutes an action asserting defects in the construction of five or more units, the provisions of this section shall apply. For purposes of this section, "action" shall have the same meaning as set forth in section [13-20-803](#) (1), C.R.S.

(b) The executive board shall substantially comply with the provisions of this section.

(2) (a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the executive board shall mail or deliver written notice of the commencement or anticipated commencement of such action to each unit owner at the last known address described in the association's records.

(b) The notice required by paragraph (a) of this subsection (2) shall state a general description of the following:

(I) The nature of the action and the relief sought; and

(II) The expenses and fees that the executive board anticipates will be incurred in prosecuting the action.

(3) Nothing in this section shall be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

SECTION 4. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) This act shall apply to actions filed on or after the applicable effective date of this act.

Doug Dean Stan Matsunaka

SPEAKER OF THE HOUSE PRESIDENT OF
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CHIEF CLERK OF THE HOUSE SECRETARY OF
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APPROVED _____

Bill Owens

GOVERNOR OF THE STATE OF COLORADO