

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0501.02 Duane Gall x4335

HOUSE BILL 17-1169

HOUSE SPONSORSHIP

Leonard, Lundeen, Humphrey, Williams D., Carver, Everett, Van Winkle, Becker J.,
Navarro, Neville P., Nordberg

SENATE SPONSORSHIP

Tate, Neville T.

House Committees

State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A CONSTRUCTION PROFESSIONAL'S STATUTORY RIGHT TO**
102 **REPAIR UNDER THE "CONSTRUCTION DEFECT ACTION REFORM**
103 **ACT".**

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>.)

The bill clarifies that a construction professional has the right to receive notice from a prospective claimant concerning an alleged construction defect; to inspect the property; and then to elect to either repair the defect or tender an offer of settlement before the claimant can file a lawsuit seeking damages.

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.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and determines that:

4 (a) Many Coloradans, particularly those thirty years of age and
5 younger, are being deprived of affordable housing due to a shortage of
6 lower-priced condominiums in the housing market;

7 (b) A principal cause of this shortage is the risk of litigation, with
8 its attendant high costs, which condominium developers find outweighs
9 the benefits of pursuing this market segment;

10 (c) For those developers who wish to insure themselves against
11 this potential liability, premiums are prohibitively high, driving prices of
12 owner-occupied condominium housing out of reach of many first-time
13 buyers; and

14 (d) As a result, many young families have no choice but to pay
15 increasingly higher rental rates for housing instead of purchasing a home
16 and becoming more stable supporters of their communities.

17 (2) Therefore, the general assembly declares that the purpose of
18 this act is to protect the rights of homeowners and the duties of
19 construction professionals so that each may serve the interests of the other
20 satisfactorily and for mutual benefit.

21 **SECTION 2.** In Colorado Revised Statutes, 13-20-803.5, **amend**
22 (3), (4), (5), (6), and (7) as follows:

23 **13-20-803.5. Notice of claim process.** (3) (a) Within thirty days
24 following the completion of the inspection process conducted pursuant to
25 subsection (2) of this section, or within forty-five days following the
26 completion of the inspection process in the case of a commercial

1 property, a construction professional may send or deliver to the claimant,
2 by certified mail, return receipt requested, or personal service:

3 (I) An offer to settle the claim by payment of a sum certain; or ~~by~~
4 ~~agreeing to remedy the claimed defect described in the notice of claim. A~~
5 ~~written offer to remedy the construction defect shall include:~~

6 (II) NOTICE OF THE CONSTRUCTION PROFESSIONAL'S ELECTION TO
7 REPAIR THE DEFECT.

8 (b) (I) IF THE CONSTRUCTION PROFESSIONAL GIVES NOTICE OF AN
9 ELECTION TO REPAIR THE DEFECT IN ACCORDANCE WITH SUBSECTION
10 (3)(a)(II) OF THIS SECTION, THE NOTICE OF ELECTION MUST INCLUDE:

11 (A) A report of the scope of the inspection, the findings and
12 results of the inspection, a description of the additional construction work
13 necessary to remedy the defect described in the notice of claim and all
14 damage to the improvement to real property caused by the defect, and a
15 timetable for the completion of the remedial construction work; AND

16 (B) IF THE CLAIMANT WILL NEED TO MOVE FROM A RESIDENCE
17 DURING THE REPAIR, MONETARY COMPENSATION IN AN AMOUNT
18 REASONABLY NECESSARY TO REIMBURSE THE CLAIMANT FOR TEMPORARY
19 HOUSING OR FOR STORAGE OF HOUSEHOLD ITEMS, OR BOTH.

20 (II) (A) IF THE CONSTRUCTION PROFESSIONAL DOES NOT GIVE
21 NOTICE OF AN ELECTION TO REPAIR THE DEFECT IN ACCORDANCE WITH
22 SUBSECTION (3)(a)(II) OF THIS SECTION, THE CLAIMANT MAY COMMENCE
23 AN ACTION BASED ON THE CONSTRUCTION DEFECT.

24 (B) IF THE CONSTRUCTION PROFESSIONAL GIVES NOTICE OF AN
25 ELECTION TO REPAIR THE DEFECT IN ACCORDANCE WITH SUBSECTION
26 (3)(a)(II) OF THIS SECTION, THE CLAIMANT SHALL PROVIDE THE
27 CONSTRUCTION PROFESSIONAL WITH UNFETTERED ACCESS TO THE SUBJECT

1 PROPERTY AS NECESSARY TO CORRECT THE CONSTRUCTION DEFECT WITHIN
2 THE TIME STATED IN THE NOTICE OF ELECTION.

3 (c) THE REPAIRS MAY BE PERFORMED BY THE CONSTRUCTION
4 PROFESSIONAL IF THE CONSTRUCTION PROFESSIONAL IS PROPERLY
5 LICENSED, BONDED, AND INSURED TO PERFORM THE REPAIRS AND, IF NOT,
6 THE REPAIRS MAY BE PERFORMED BY ANOTHER PERSON WHO MEETS THOSE
7 QUALIFICATIONS.

8 (d) THE REPAIRS MUST BE PERFORMED:

9 (I) ON REASONABLE DATES AND AT REASONABLE TIMES AGREED
10 TO IN ADVANCE WITH THE CLAIMANT;

11 (II) IN COMPLIANCE WITH ANY APPLICABLE BUILDING CODE AND IN
12 A GOOD AND WORKMANLIKE MANNER IN ACCORDANCE WITH THE
13 GENERALLY ACCEPTED STANDARD OF CARE IN THE INDUSTRY FOR THAT
14 TYPE OF REPAIR; AND

15 (III) IN A MANNER THAT WILL NOT INCREASE THE COST OF
16 MAINTAINING THE SUBJECT PROPERTY OVER THE COST THAT OTHERWISE
17 WOULD HAVE BEEN REQUIRED IF THE SUBJECT PROPERTY HAD BEEN
18 CONSTRUCTED WITHOUT THE CONSTRUCTION DEFECT, UNLESS THE
19 CONSTRUCTION PROFESSIONAL AND THE CLAIMANT AGREE IN WRITING
20 THAT THE CONSTRUCTION PROFESSIONAL WILL COMPENSATE THE
21 CLAIMANT FOR THE INCREASED COST INCURRED AS A RESULT OF THE
22 REPAIR.

23 (e) ANY PART OF THE SUBJECT PROPERTY THAT IS NOT DEFECTIVE
24 BUT WHICH MUST BE REMOVED TO CORRECT THE CONSTRUCTION DEFECT
25 MUST BE REPLACED.

26 (f) THE CONSTRUCTION PROFESSIONAL SHALL PREVENT, AND
27 REMOVE AND INDEMNIFY THE CLAIMANT AGAINST, ANY MECHANIC'S LIEN

1 OR MATERIALMAN'S LIEN.

2 (g) AN ELECTION TO REPAIR MADE PURSUANT TO THIS SECTION
3 SHALL NOT BE MADE CONDITIONAL UPON A RELEASE OF LIABILITY.

4 (h) NOT LATER THAN THIRTY DAYS AFTER THE REPAIRS ARE
5 COMPLETED, THE CONSTRUCTION PROFESSIONAL WHO REPAIRED OR
6 CAUSED THE REPAIR OF A CONSTRUCTION DEFECT SHALL PROVIDE THE
7 CLAIMANT WITH A WRITTEN STATEMENT DESCRIBING THE NATURE AND
8 EXTENT OF THE REPAIR, THE METHOD USED TO REPAIR THE CONSTRUCTION
9 DEFECT, AND THE EXTENT OF ANY MATERIALS OR PARTS THAT WERE
10 REPLACED DURING THE REPAIR.

11 (4) Unless a claimant accepts an offer TO SETTLE made pursuant
12 to ~~subsection (3)~~ SUBSECTION (3)(a)(I) of this section in writing within
13 fifteen days ~~of~~ AFTER the delivery of the offer, the offer ~~shall be~~ IS
14 deemed to ~~have been~~ rejected.

15 (5) A claimant who accepts a construction professional's offer to
16 ~~remedy or~~ settle by payment of a sum certain a construction defect claim
17 shall do so by sending the construction professional a written notice of
18 acceptance no later than fifteen days after receipt of the offer. If an offer
19 to settle is accepted, then the monetary settlement shall be paid in
20 accordance with the offer. ~~If an offer to remedy is accepted by the~~
21 ~~claimant, the remedial construction work shall be completed in~~
22 ~~accordance with the timetable set forth in the offer unless the delay is~~
23 ~~caused by events beyond the reasonable control of the construction~~
24 ~~professional.~~

25 (6) If no offer TO SETTLE is made by the construction professional
26 or if the claimant rejects an offer, the claimant may bring an action
27 against the construction professional for the construction defect claim

1 described in the notice of claim, unless the parties have contractually
2 agreed to a mediation procedure, in which case the mediation procedure
3 shall be satisfied prior to bringing an action.

4 (7) If an offer TO SETTLE by a construction professional is made
5 and accepted, and if thereafter the construction professional does not
6 comply with its offer to ~~remedy or settle, a claim for a construction defect~~
7 OR IF THE CONSTRUCTION PROFESSIONAL MAKES AN ELECTION TO REPAIR
8 AND THEREAFTER DOES NOT COMPLETE THE REPAIRS AS DESCRIBED IN THE
9 NOTICE OF ELECTION UNDER SUBSECTION (3)(a)(II) OF THIS SECTION, the
10 claimant may file an action against the construction professional for
11 claims arising out of the defect or damage described in the notice of claim
12 without further notice.

13 **SECTION 3. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly (August
16 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
17 referendum petition is filed pursuant to section 1 (3) of article V of the
18 state constitution against this act or an item, section, or part of this act
19 within such period, then the act, item, section, or part will not take effect
20 unless approved by the people at the general election to be held in
21 November 2018 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.