



Colorado  
Legislative  
Council  
Staff

SB17-156

FINAL  
FISCAL NOTE

FISCAL IMPACT:  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

Drafting Number: LLS 17-0388  
Prime Sponsor(s): Sen. Hill  
Rep. Wist; Saine

Date: August 30, 2017  
Bill Status: Postponed Indefinitely  
Fiscal Analyst: Josh Abram (303-866-3561)

BILL TOPIC: HOA CONSTRUCTION DEFECT LAWSUIT APPROVAL TIMELINES

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
State Expenditures	Minimal workload reduction.	
Appropriation Required: None.		
Future Year Impacts: Ongoing minimal workload reduction.		

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

The bill requires that a homeowners' association (HOA) use mediation or arbitration before a lawsuit can be filed in disputes involving construction defects against a development party. If an HOA had governing documents that required mediation or arbitration at the time of construction, the HOA must adhere to that original policy in construction defect cases.

The parties involved in a dispute must mutually agree upon a mediation or arbitration service provider, with preference given to a provider specified in the HOA governing documents. The mediation or arbitration must take place at a mutually agreeable location in the judicial district in which the HOA is located. The mediator or arbitrator must:

- be a neutral third party;
- make certain disclosures before being selected; and
- be qualified in accordance with applicable state or federal laws governing mediation and arbitration.

If no mediation or arbitration service provider is outlined in the HOA governing documents, and the parties are unable to agree upon a provider, the parties may petition the district court in the HOA's jurisdiction to appoint the provider. In the arbitration of a construction defect action, the arbitrator is required to follow the substantive state law with regard to any claim, defense, or remedy granted, and a failure to do so is grounds for a district court to vacate or refuse to confirm the arbitrator's award.

In addition to submitting to mediation or arbitration before filing a lawsuit, the HOA's executive board must send an advance notice to all unit owners that includes a general description of the claim, the relief sought, and a good-faith estimate of the benefits and risks involved in a format outlined in the bill. The HOA's executive board must obtain signed, written consent from a majority of the unit owners acknowledging that the owner has received the notice required under the bill and approves of the board's proposed action.

Prior to the purchase and sale of property in an HOA, the bill requires that a disclosure notice inform the purchaser that he or she is required to become a member of the HOA, and that the community bylaws may require that certain disputes be resolved by mandatory binding arbitration.

The bill also adds notice requirements for lawsuits initiated by HOAs in matters other than construction defect claims. Specifically, the HOA must provide notice to unit owners at least 30 days prior to commencement of the legal action.

### **State Expenditures**

The bill is expected to result in a minimal workload reduction for the trial courts of the Judicial Department. The Judicial Branch processes approximately 150 to 200 construction defect cases annually. Because the bill requires HOAs to pursue alternative dispute resolution prior to filing a construction defect claim with the district court, it is assumed that mediation or arbitration will result in some cases being settled outside of court. While it is possible that additional hearings will take place to assess compliance with the provisions of the bill, these instances are expected to be minimal. No change in appropriations to the Judicial Branch is required.

### **Effective Date**

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on April 20, 2017.

### **State and Local Government Contacts**

Judicial  
Secretary of State

Local Affairs  
Counties

Regulatory Agencies  
Municipalities