

SB24-106

## SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Zenzinger

1 Strike the Local Government and Housing Committee Report, dated  
2 March 21, 2024.

3 Amend printed bill, strike everything below the enacting clause and  
4 substitute:

5 **"SECTION 1. Legislative declaration.** (1) The general  
6 assembly finds that:

7 (a) Access to affordable, quality housing is foundational to  
8 personal and financial stability and provides safety and life sustaining  
9 shelter, but it is also a vehicle for reducing childhood poverty and  
10 increasing economic mobility and intergenerational wealth;

11 (b) Colorado has a challenge insofar as, according to the state  
12 demographer, it has the sixth most expensive housing market in the  
13 nation;

14 (c) Our state's housing supply has not kept pace with our  
15 population growth. Between 2010 and 2020, the state added 126,000  
16 fewer housing units than in the prior decade, and as of 2022, Colorado  
17 has an unmet housing need of between 65,000 and 100,000 units.

18 (d) To address this challenge, Colorado must not only increase the  
19 number of homes that are available for purchase or rent, but it must also  
20 ensure that the increased supply is a diverse combination of rental and  
21 home ownership opportunities that will meet the needs, preferences, and  
22 varied income levels of the people in our state;

23 (e) Multifamily for-sale housing is a critical component of this  
24 solution because it helps close the affordability gap and adds a needed  
25 element to the diverse mix of housing options the state can offer  
26 Coloradans, and historically condominiums have been the most affordable  
27 housing choice for owner-occupied housing;

28 (f) Notwithstanding the fact that Colorado's population today is  
29 20% greater than what it was in 2008, condominium construction in the  
30 front range has slowed dramatically and is now 76% lower than it was in  
31 the years between 2002 and 2008, and between 2007 and 2022, the  
32 number of entities developing condominiums decreased by 84%;

33 (g) Despite the downturn in construction, consumer demand for  
34 condominiums remains strong in Colorado;

35 (h) There were 2.4 resold condominiums for every new  
36 condominium sale in 2005, but in 2022, there were 30 condominium  
37 resales for every new sale, and this is especially true for affordably priced  
38 condominiums;

39 (i) At the same time that fewer mid-priced condominiums are

1 being built, they are also becoming increasingly more expensive to  
2 construct, and that cost is passed on to the consumer in the form of higher  
3 sales prices;

4 (j) In 2005, the majority of new and existing condominium units  
5 were priced under \$300,000 because of an adequate supply, but by 2023,  
6 only 2% of new condominiums built were priced under \$300,000, and due  
7 to the severe lack of supply, currently only one-third of resale  
8 condominiums are available for a price under \$300,000;

9 (k) While costs of labor and materials are increasing for all types  
10 of home construction, the cost increases associated with condominium  
11 construction have outpaced those associated with single-family home  
12 construction, and this is particularly evident as it relates to the cost for  
13 contractors' liability insurance;

14 (l) In Colorado, the high costs and frequency of construction  
15 liability litigation related to condominium development have driven  
16 insurance companies to raise insurance rates for developers;

17 (m) In recent years, insurance costs for condominiums surged to  
18 5.5% of a project's hard costs, which was more than 233% higher than the  
19 insurance costs of multifamily rental home projects; and

20 (n) Colorado needs balanced public policy that decreases  
21 insurance costs by reducing the magnitude and frequency of defect  
22 claims, ensures that every homeowner has the right to pursue timely and  
23 effective remedies for defective construction, and ensures that such  
24 remedies are fair to the home buyer but do not prevent the construction  
25 of affordable multifamily for-sale housing options.

26 (2) The general assembly declares that this act will help bring  
27 down the building costs of affordably priced homes and create more  
28 opportunities to build wealth for Coloradans through home ownership.

29 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-303.5,  
30 **amend** (1)(d)(I)(A) and (1)(d)(III) introductory portion as follows:

31 **38-33.3-303.5. Construction defect actions - disclosure -**  
32 **approval by unit owners - definitions - exemptions. (1) (d) Approval**  
33 **by unit owners - procedures. (I) (A)** Notwithstanding any provision of  
34 law or any requirement in the governing documents, the executive board  
35 **may** HAS THE RIGHT TO initiate the construction defect action only if  
36 authorized within the voting period by owners of units to which a  
37 ~~majority of~~ AT LEAST SIXTY PERCENT OF THE votes in the association are  
38 allocated. ~~Such~~ A UNIT OWNER VOTING IN FAVOR OF PROCEEDING WITH A  
39 CONSTRUCTION DEFECT ACTION MUST ALSO ACKNOWLEDGE IN WRITING  
40 THAT THE UNIT OWNER HAS RECEIVED THE DISCLOSURES REQUIRED UNDER  
41 SECTION 38-33.3-303.5 (1)(c) AND THAT THE UNIT OWNER HAS BEEN  
42 INFORMED OF THE UNIT OWNER'S OBLIGATION UNDER COLORADO LAW TO  
43 DISCLOSE KNOWN DEFECTS UPON SALE OF THE PROPERTY. THE approval

1 is not required for an association to proceed with a construction defect  
2 action if the alleged construction defect pertains ONLY to a facility that is  
3 intended and used for nonresidential purposes and if the cost to repair the  
4 alleged defect does not exceed fifty thousand dollars. ~~Such~~ THE approval  
5 is not required for an association to proceed with a construction defect  
6 action when the association is the DIRECT contracting party for the  
7 performance of labor or purchase of services or materials.

8 (III) **Vote count - exclusions.** For purposes of calculating the  
9 required ~~majority~~ vote under this subsection (1)(d) only, the following  
10 votes are excluded:

11 **SECTION 3.** In Colorado Revised Statutes, 13-20-804, **amend**  
12 (1); **repeal** (2); and **add** (1)(e) and (3) as follows:

13 **13-20-804. Restriction on construction defect negligence**  
14 **claims.** (1) ~~No negligence claim seeking damages for a construction~~  
15 ~~defect may be asserted in~~ A CLAIMANT IS BARRED FROM BRINGING OR  
16 MAINTAINING A CLAIM SEEKING DAMAGES FOR A CONSTRUCTION DEFECT  
17 AS an action if ~~such~~ THE claim arises from the failure to construct an  
18 improvement to real property in substantial compliance with an applicable  
19 building code or industry standard; except that ~~such~~ THE claim may be  
20 asserted if ~~such~~ THE failure ~~results in~~ CAUSES one or more of the  
21 following:

- 22 (a) Actual damage to real or personal property;
- 23 (b) Actual loss of the use of real or personal property;
- 24 (c) Bodily injury or wrongful death; ~~or~~
- 25 (d) ~~A risk of bodily injury or death to, or a threat to the life,~~  
26 ~~health, or safety of,~~ VERIFIABLE DANGER TO the occupants of the  
27 residential real property;
- 28 (e) AN ACTUAL FAILURE OR LACK OF CAPACITY OF A BUILDING  
29 COMPONENT TO PERFORM THE INTENDED FUNCTION OR PURPOSE OF THE  
30 BUILDING COMPONENT.

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

- 33 (a) ~~The assertion of tort claims other than claims for negligence;~~
- 34 (b) ~~The assertion of contract or warranty claims; or~~
- 35 (c) ~~The assertion of claims that arise from the violation of any~~  
36 ~~statute or ordinance other than claims for violation of a building code.~~

37 (3) THIS SECTION DOES NOT PROHIBIT, LIMIT, OR IMPAIR CLAIMS,  
38 INCLUDING EXPRESS CONTRACT CLAIMS, THAT ARE NOT BASED UPON  
39 VIOLATIONS OF AN APPLICABLE BUILDING CODE, MANUFACTURER'S  
40 INSTRUCTIONS, OR INDUSTRY STANDARD.

41 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-302, **add**  
42 (3)(c) as follows:

43 **38-33.3-302. Powers of unit owners' association.** (3) (c) IF AN

1 ASSOCIATION TAKES AN ACTION UNDER SUBSECTION (1)(d) OF THIS  
2 SECTION FOR A CONSTRUCTION DEFECT ON BEHALF OF TWO OR MORE UNIT  
3 OWNERS, EACH CLAIM BROUGHT ON BEHALF OF A UNIT OWNER IS SUBJECT  
4 TO EACH DEFENSE THAT THE UNIT OWNER WOULD BE SUBJECT TO IF THE  
5 UNIT OWNER HAD BROUGHT THE CLAIM.

6 **SECTION 5. Act subject to petition - effective date -**  
7 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
8 the expiration of the ninety-day period after final adjournment of the  
9 general assembly; except that, if a referendum petition is filed pursuant  
10 to section 1 (3) of article V of the state constitution against this act or an  
11 item, section, or part of this act within such period, then the act, item,  
12 section, or part will not take effect unless approved by the people at the  
13 general election to be held in November 2024 and, in such case, will take  
14 effect on the date of the official declaration of the vote thereon by the  
15 governor.

16 (2) This act applies to civil actions occurring and notices of claims  
17 received on or after the applicable effective date of this act.".

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