

SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Cutter

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
27 affordable 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, and this is especially true for
35 affordably priced condominiums;

36 (h) In 2005, there were 2.4 resold condominiums for every new
37 condominium sale, but in 2022, there were 30 condominium resales for
38 every new sale;

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 increased cost is passed on to the consumer in the form
3 of higher 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, only one-third of resale condominiums are
8 currently 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 is 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 SUBSECTION (1)(c) OF THIS SECTION 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** (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~~ AN UNREASONABLE risk of bodily injury or death to, or a
26 threat to the life, health, or safety of, the occupants of the residential real
27 property; OR
- 28 (e) AN UNREASONABLE REDUCTION IN THE CAPABILITY OF, OR AN
29 ACTUAL FAILURE OF, A BUILDING COMPONENT TO PERFORM AN INTENDED
30 FUNCTION OR PURPOSE.

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 EXPRESS
38 CONTRACT CLAIMS OR CLAIMS THAT ARE NOT BASED UPON VIOLATIONS OF
39 AN APPLICABLE BUILDING CODE, MANUFACTURER'S INSTRUCTIONS, OR
40 INDUSTRY STANDARD.

41 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-302, **add**
42 (3)(c) and (5) as follows:

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

1 AN 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 (II) THIS SUBSECTION (3)(c) DOES NOT PROHIBIT AN ASSOCIATION
7 FROM ASSERTING CLAIMS ON BEHALF OF TWO OR MORE UNIT OWNERS
8 THROUGH A SINGLE ACTION.

9 (5) ANY PROVISION IN LAW, A CONTRACT, OR AN ASSOCIATION'S
10 GOVERNING DOCUMENTS IS VOID AS AGAINST PUBLIC POLICY IF THE
11 PROVISION:

12 (a) APPLIES TO A COMMON INTEREST COMMUNITY; AND

13 (b) CONTAINS CONSTRUCTION DEFECT PRE-CLAIM PROCEDURES
14 THAT ARE MORE ONEROUS THAN THOSE CONTAINED IN THIS ARTICLE 33.3
15 OR PART 8 OF ARTICLE 20 OF TITLE 13.

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

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

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