

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

INTRODUCED

LLS NO. 25-0097.01 Yelana Love x2295

HOUSE BILL 25-1272

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A BILL FOR AN ACT

101 **CONCERNING HOUSING.**

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>.)

For construction of middle market housing, **section 3** of the bill requires a person filing a construction defect action against an architect or engineer to file with the complaint an affidavit of a third-party licensed professional indicating the negligence or other action, error, or omission of the construction professional. **Section 3** also establishes a rebuttable presumption that a property does not have a construction defect when a state agency or local government has issued a certificate of occupancy for the property.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

Section 4:

- Establishes a claimant's duty to mitigate an alleged construction defect and specifies how a claimant may satisfy this duty and the consequences to a claimant that fails to satisfy this duty;
- Requires that a construction professional must send or deliver to the claimant an offer to settle the claim or a written response that identifies the standards that apply to the claim and explains why the defect does not require repair; and
- Requires a construction professional who is the defendant in a construction defects action to submit specified information to the claimant.

Section 5 updates the statute of limitations for construction defect claims to 10 years unless the construction professional provided the consumer with a warranty that meets the requirements of the bill, in which case the statute of limitations is 6 years. **Section 6** tolls the statute of limitations or repose during a claimant's mitigation of an alleged construction defect claim brought for the construction of middle market housing.

Section 7 allows a construction professional that meets specified requirements to use certain affirmative defenses in construction claims brought against the construction professional for the construction of middle market housing.

Current law requires the executive board of a unit owners' association (executive board) to obtain approval from a majority of owners before initiating a construction defect claim on behalf of the owners. **Section 8** increases the approval amount to 65%. **Section 8** also requires an executive board that is successful in a construction defect claim to first use monetary damages received as a result of the claim to repair the construction defect.

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

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

4 (a) Homeownership is a cornerstone of economic stability, but for
5 many Coloradans, particularly first-time homebuyers, it has become
6 increasingly out of reach. Surveys show that while 90% of renters aspire
7 to own a home, more than half believe it is unattainable. This concern is

1 personal for many, with over 4 out of 5 parents expressing concerns about
2 whether their children will be able to afford to live in Colorado. Many
3 Coloradans agree that increasing the variety and availability of housing
4 options is crucial, as people want the ability to find and choose housing
5 that fits their needs, whether it's through more accessible price points or
6 housing types.

7 (b) Millennials, the largest group of homebuyers in Colorado at
8 38% of the market, are facing increasing challenges, as the median age of
9 first-time homebuyers has risen from 35 to 38 in just the past year. These
10 gaps are just a few of many that highlight the urgent need for policies that
11 facilitate affordable and attainable homeownership, particularly through
12 the construction of entry-level homes.

13 (c) Condominiums and townhomes have often served as
14 affordable starter home options, providing the first step on the
15 homeownership ladder for many Coloradans. Despite the clear need for
16 these homes, however, condominium development in Colorado has
17 drastically decreased. Before 2009, there were 1.25 new apartments for
18 every one condominium. This has shifted radically to 14 new apartments
19 for every condominium in recent years. The decline in condominium
20 construction coincides with a housing shortfall of at least 100,000 homes
21 in the state, further worsening the availability of affordable options for
22 first-time buyers.

23 (d) Current construction litigation laws are often cited as a
24 contributing factor to the high cost of construction and a deterrent for
25 developers to pursue condominium projects. At the same time,
26 homeowners have limited up-front assurances of high-quality
27 construction in new homes and, when issues occur, must use litigation

1 laws to seek remedy. It is critical that policies seek to support
2 homeowners' rights while spurring development in a key housing market.

3 (e) Without addressing these challenges, Colorado will continue
4 to experience a shortage of entry-level homes for its first-time
5 homebuyers and struggle to meet the needs of Coloradans. It is imperative
6 that the state creates policies that encourage the entire housing ecosystem
7 to work together to create more attainable housing options for
8 Coloradans.

9 (f) This act is intended to:

10 (I) Promote the construction of affordable homes so that
11 homeownership becomes a more attainable goal for a larger portion of the
12 population;

13 (II) Expand prospective homeowners' access to high-quality,
14 well-constructed homes;

15 (III) Ensure continued protections for homeowners when defects
16 in their homes exist;

17 (IV) Reform construction litigation to reduce the excessive costs
18 associated with entry-level home development;

19 (V) Strengthen Colorado's housing market by expanding
20 opportunities for first-time homebuyers; and

21 (VI) Ensure that future generations of Coloradans are able to
22 access the American dream of homeownership, which is integral to
23 long-term financial security and generational wealth-building; and

24 (g) This act is rationally related to the legitimate state interest of
25 increasing middle market housing in Colorado.

26 **SECTION 2.** In Colorado Revised Statutes, 13-20-802.5, **add**
27 (4.5) and (6) as follows:

1 **13-20-802.5. Definitions.** As used in this part 8, unless the
2 context otherwise requires:

3 (4.5) "MIDDLE MARKET HOUSING" MEANS MULTIFAMILY,
4 ATTACHED HOUSING OF TWO OR MORE UNITS WHERE EACH UNIT:

5 (a) IS FOR SALE AT OR BELOW THE MAXIMUM LOAN LIMITS IN THE
6 COUNTY IN WHICH THE UNIT IS CONSTRUCTED, AS THE LOAN LIMITS ARE
7 DETERMINED BY THE FEDERAL HOUSING ADMINISTRATION IN THE FEDERAL
8 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; AND

9 (b) HAS HAD A THIRD-PARTY INSPECTION.

10 (6) "THIRD-PARTY INSPECTION" MEANS A COMPONENT, SYSTEM, OR
11 IMPROVEMENT INSPECTION, INCLUDING ON-SITE MONITORING OF WORK IN
12 PROGRESS OR MULTIPLE INSPECTIONS THROUGHOUT THE CONSTRUCTION
13 AND AN INSPECTION UPON COMPLETION OF THE CONSTRUCTION, THAT
14 COMPLIES WITH THE FOLLOWING REQUIREMENTS FOR ANY COMPONENT,
15 SYSTEM, OR IMPROVEMENT ALLEGED TO BE DEFECTIVE:

16 (a) THE INSPECTION WAS PERFORMED BY AN INSPECTOR:

17 (I) WHO HAS EXPERTISE DESIGNING THE COMPONENT, SYSTEM, OR
18 IMPROVEMENT BEING INSPECTED;

19 (II) WHO IS AN INDEPENDENT THIRD PARTY NOT EMPLOYED BY OR
20 AFFILIATED WITH THE CONSTRUCTION PROFESSIONAL WHO WAS INVOLVED
21 IN THE DEVELOPMENT, DESIGN, OR CONSTRUCTION OF THE COMPONENT,
22 SYSTEM, OR IMPROVEMENT; AND

23 (III) WHO IS RESPONSIBLE FOR PERFORMING THE INSPECTION
24 DUTIES WITH A REASONABLE DEGREE OF CARE; AND

25 (b) THE INSPECTION INCLUDES, FOR EACH COMPONENT, SYSTEM,
26 OR IMPROVEMENT ALLEGED TO BE DEFECTIVE, A SIGNED AND STAMPED
27 CERTIFICATION THAT, FOR EACH COMPONENT, SYSTEM, OR IMPROVEMENT

1 ALLEGED TO BE DEFECTIVE, VERIFIES THAT:

2 (I) THE COMPONENT, SYSTEM, OR IMPROVEMENT WAS DETAILED IN
3 APPROVED CONSTRUCTION PLANS UNDER THE VALID SEAL OF AN
4 ARCHITECT OR ENGINEER LICENSED IN COLORADO;

5 (II) (A) PRIOR TO INSPECTION BY THE BUILDING DEPARTMENT, THE
6 COMPONENT, SYSTEM, OR IMPROVEMENT WAS SUBJECT TO A FIELD
7 INSPECTION AND APPROVAL BY THE THIRD-PARTY INSPECTOR WHO
8 CERTIFIES THAT, AT THE TIME OF INSPECTION, THE COMPONENT, SYSTEM,
9 OR IMPROVEMENT WAS SUFFICIENTLY ACCESSIBLE TO DETERMINE
10 COMPLIANCE WITH AND DID COMPLY WITH APPLICABLE MANUFACTURER'S
11 INSTRUCTIONS OR RECOMMENDATIONS, STAMPED PROJECT PLANS AND
12 SPECIFICATIONS, AND THE APPLICABLE BUILDING CODE.

13 (B) IF THE FIELD INSPECTION DOES NOT INCLUDE EVERY LOCATION
14 WHERE THE COMPONENT, SYSTEM, OR IMPROVEMENT IS CONSTRUCTED,
15 THE SIGNED AND STAMPED CERTIFICATION MUST INCLUDE THE PERMIT
16 NUMBER; THE DATE OF INSPECTION; THE TYPE OF INSPECTION; THE
17 CONTRACTOR'S NAME AND LICENSE NUMBER; THE STREET ADDRESS OF THE
18 JOB LOCATION; THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
19 ARCHITECT OR ENGINEER WHO PERFORMED THE INSPECTION; AND A
20 STATEMENT THAT THE INSPECTOR INSPECTED A SUFFICIENT NUMBER OF
21 LOCATIONS TO CONCLUDE WITH A REASONABLE DEGREE OF CERTAINTY
22 THAT EVERY LOCATION OF THE COMPONENT, SYSTEM, OR IMPROVEMENT
23 COMPLIES WITH STAMPED PROJECT PLANS AND SPECIFICATIONS AND THE
24 APPLICABLE BUILDING CODE.

25 (III) ANY INSTANCE OF NONCOMPLIANT DESIGN OR CONSTRUCTION
26 IDENTIFIED DURING AN INSPECTION HAS BEEN RESOLVED AND THAT THE
27 COMPONENT, SYSTEM, OR IMPROVEMENT COMPLIES WITH APPLICABLE

1 STANDARDS.

2 **SECTION 3.** In Colorado Revised Statutes, **add** 13-20-803.3 and
3 13-20-803.4 as follows:

4 **13-20-803.3. Construction defect claims against architects and**
5 **engineers - middle market housing.** (1) (a) EXCEPT AS PROVIDED IN
6 SUBSECTION (2) OF THIS SECTION, A PERSON MUST FILE WITH A COMPLAINT
7 A CERTIFICATE OF REVIEW IN COMPLIANCE WITH SECTION 13-20-602 FOR
8 A CONSTRUCTION DEFECT ACTION THAT IS:

9 (I) AGAINST A CONSTRUCTION PROFESSIONAL WHO IS AN
10 ARCHITECT OR ENGINEER; AND

11 (II) FOR A DEFECT IN THE CONSTRUCTION OF MIDDLE MARKET
12 HOUSING.

13 (b) THE CERTIFICATE OF REVIEW FILED IN ACCORDANCE WITH
14 SUBSECTION (1)(a) OF THIS SECTION MUST, BASED ON FACTS KNOWN TO
15 THE PARTY FILING THE CERTIFICATE OF REVIEW:

16 (I) SET FORTH THE ARCHITECT'S OR ENGINEER'S NEGLIGENCE,
17 INCLUDING ANY ACT OR OMISSION IN PROVIDING ADVICE, EXERCISING
18 JUDGMENT, GIVING AN OPINION, OR EXERCISING A SIMILAR PROFESSIONAL
19 SKILL; AND

20 (II) DECLARE THAT THE INDIVIDUAL CONSULTED CAN
21 DEMONSTRATE BY COMPETENT EVIDENCE THAT, AS A RESULT OF TRAINING,
22 EDUCATION, KNOWLEDGE, AND EXPERIENCE, THE CONSULTANT IS
23 COMPETENT TO EXPRESS AN OPINION AS TO THE NEGLIGENCE, INCLUDING
24 AN ACT OR OMISSION, ALLEGED.

25 (c) IF A CLAIMANT FAILS TO FILE THE CERTIFICATE OF REVIEW
26 REQUIRED IN THIS SUBSECTION (1), THE COURT SHALL DISMISS THE
27 COMPLAINT AGAINST THE DEFENDANT UNLESS THE CLAIMANT SHOWS

1 GOOD CAUSE FOR THE FAILURE.

2 (2) A CLAIMANT IS NOT REQUIRED TO COMPLY WITH THE
3 CERTIFICATE OF REVIEW REQUIREMENTS OF THIS SECTION IF:

4 (a) A CLAIM IS FOR CONSTRUCTION IN WHICH A GOVERNMENTAL
5 ENTITY CONTRACTED WITH A SINGLE ENTITY TO PROVIDE BOTH DESIGN
6 AND CONSTRUCTION SERVICES FOR THE CONSTRUCTION, REHABILITATION,
7 ALTERATION, OR REPAIR OF A FACILITY, A BUILDING OR AN ASSOCIATED
8 STRUCTURE, A CIVIL WORKS PROJECT, OR A HIGHWAY PROJECT; OR

9 (b) THE PERIOD OF LIMITATION WOULD EXPIRE WITHIN TEN DAYS
10 AFTER THE DATE OF FILING AND, BECAUSE OF THE TIME CONSTRAINT, THE
11 CLAIMANT HAS ALLEGED THAT A CERTIFICATE OF REVIEW BY A
12 THIRD-PARTY ARCHITECT OR ENGINEER COULD NOT BE PREPARED. A
13 CLAIMANT THAT DOES NOT FILE A CERTIFICATE OF REVIEW UNDER THIS
14 SECTION SHALL SUPPLEMENT THE COMPLAINT WITH A CERTIFICATE OF
15 REVIEW WITHIN TWENTY-EIGHT DAYS AFTER THE FILING OF THE
16 COMPLAINT; EXCEPT THAT A COURT MAY, ON MOTION AND FOR GOOD
17 CAUSE, GRANT A CLAIMANT ADDITIONAL TIME TO FILE THE CERTIFICATE OF
18 REVIEW.

19 (3) A DEFENDANT THAT DESIGNATES AN ARCHITECT OR ENGINEER
20 AS A NONPARTY AT FAULT IN ACCORDANCE WITH SECTION 13-21-111.5
21 (3)(b) MUST FILE WITH THE DESIGNATION A CERTIFICATE OF REVIEW THAT
22 COMPLIES WITH SUBSECTION (1) OF THIS SECTION AND SECTION 13-20-602.
23 IF THE DEFENDANT FAILS TO FILE THE CERTIFICATE OF REVIEW AS
24 REQUIRED IN THIS SUBSECTION (3), A COURT SHALL NOT CONSIDER THE
25 NEGLIGENCE OR FAULT OF THE NONPARTY.

26 (4) THIS SECTION DOES NOT:

27 (a) EXTEND THE APPLICABLE PERIOD OF LIMITATION OR REPOSE; OR

1 (b) APPLY TO A SUIT OR ACTION FOR THE PAYMENT OF FEES
2 ARISING OUT OF THE PROVISION OF PROFESSIONAL SERVICES.

3 **13-20-803.4. Rebuttable presumptions in construction defect**
4 **claims in middle market housing.** (1) IN A LEGAL ACTION SUBJECT TO
5 THE NOTICE OF CLAIM PROCESS IN SECTION 13-20-803.5, THE ISSUANCE OF
6 A FINAL CERTIFICATE OF OCCUPANCY BY A STATE OR LOCAL GOVERNMENT
7 CREATES A REBUTTABLE PRESUMPTION THAT NO ACTIONABLE
8 CONSTRUCTION DEFECT EXISTS FOR THE REAL PROPERTY FOR WHICH THE
9 LOCAL GOVERNMENT ISSUED THE FINAL CERTIFICATE OF OCCUPANCY. A
10 CLAIMANT MAY OVERCOME THIS PRESUMPTION BY PROVING, BY A
11 PREPONDERANCE OF THE EVIDENCE, THAT AN ALLEGED DEFECT ON WHICH
12 THE CLAIMANT'S CLAIM IS BASED HAS RESULTED IN:

- 13 (a) ACTUAL DAMAGE TO REAL OR PERSONAL PROPERTY;
- 14 (b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;
- 15 (c) ACTUAL BODILY INJURY OR WRONGFUL DEATH;
- 16 (d) AN UNREASONABLE REDUCTION IN THE CAPABILITY OF, OR AN
17 ACTUAL FAILURE OF, A BUILDING COMPONENT TO PERFORM AN INTENDED
18 FUNCTION OR PURPOSE; OR
- 19 (e) AN UNREASONABLE RISK OF BODILY INJURY OR DEATH TO, OR
20 A THREAT TO THE LIFE, HEALTH, OR SAFETY OF, THE OCCUPANTS OF THE
21 RESIDENTIAL PROPERTY.

- 22 (2) NOTHING IN THIS SECTION:
 - 23 (a) AFFECTS THE "COLORADO GOVERNMENTAL IMMUNITY ACT",
24 ARTICLE 10 OF TITLE 24; OR
 - 25 (b) PROHIBITS, LIMITS, OR IMPAIRS A CONTRACTUAL CLAIM,
26 COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM THAT IS NOT FOR
27 DAMAGES OR LOSS TO, OR THE LOSS OF USE OF, REAL OR PERSONAL

1 PROPERTY OR PERSONAL INJURY CAUSED BY A DEFECT IN THE DESIGN OR
2 CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY.

3 **SECTION 4.** In Colorado Revised Statutes, 13-20-803.5, **amend**
4 (1), (3), (7), and (12); and **add** (3.5) and (4.5) as follows:

5 **13-20-803.5. Notice of claim process - duty to mitigate.**

6 (1) (a) No later than seventy-five days before filing an action against a
7 construction professional, or no later than ninety days before filing the
8 action in the case of a commercial property, a claimant shall send or
9 deliver a written notice of claim to the construction professional by
10 certified mail, return receipt requested, or by personal service.

11 (b) BEFORE FILING A CLAIM PURSUANT TO THIS SUBSECTION (1)
12 FOR THE CONSTRUCTION OF MIDDLE MARKET HOUSING, A CLAIMANT SHALL
13 MITIGATE THE DAMAGE CAUSED BY THE ALLEGED CONSTRUCTION DEFECT.
14 A CLAIMANT SATISFIES THE DUTY TO MITIGATE BY TAKING REASONABLE
15 ACTION TO PREVENT FURTHER DAMAGE FROM THE CONSTRUCTION DEFECT.
16 A CLAIMANT MUST CERTIFY IN THE COMPLAINT THAT THE CLAIMANT HAS
17 SATISFIED THE DUTY TO MITIGATE.

18 (c) IF THE CLAIMANT AND CONSTRUCTION PROFESSIONAL DISPUTE
19 WHETHER THE CLAIMANT HAS SATISFIED THE DUTY TO MITIGATE
20 DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION, THE CLAIMANT MAY
21 PROCEED WITH THE ACTION BUT DOES NOT RECOVER ANY DAMAGES THAT
22 THE CONSTRUCTION PROFESSIONAL PROVES WERE CAUSED BY THE
23 CLAIMANT'S UNREASONABLE FAILURE TO MITIGATE.

24 (d) A CLAIMANT DOES NOT BREACH THE DUTY TO MITIGATE IF THE
25 COST TO MITIGATE IS UNREASONABLE UNDER THE CIRCUMSTANCES OR WAS
26 BEYOND THE CLAIMANT'S FINANCIAL ABILITY TO PERFORM.

27 (3) (a) Within thirty days following the completion of the

1 inspection process conducted pursuant to subsection (2) of this section,
2 or within forty-five days following the completion of the inspection
3 process in the case of a commercial property, a construction professional
4 ~~may~~ SHALL send or deliver to the claimant, by certified mail, return
5 receipt requested, or BY personal service:

6 (I) An offer to settle the claim by:

7 (A) Payment of a sum certain; ~~or by~~

8 (B) Agreeing to remedy the claimed defect described in the notice
9 of claim; OR

10 (II) A WRITTEN RESPONSE THAT:

11 (A) IDENTIFIES THE STANDARDS THAT APPLY TO THE CLAIMED
12 DEFECT'S CONSTRUCTION OR PERFORMANCE; AND

13 (B) EXPLAINS WHY THE CLAIMED DEFECT DOES NOT REQUIRE
14 REPAIR.

15 (b) A written offer to remedy ~~the~~ A construction defect ~~shall~~ MUST
16 include a report of the scope of the inspection, the findings and results of
17 the inspection, a description of the additional construction work necessary
18 to remedy the defect described in the notice of claim and all damage to
19 the improvement to real property caused by the defect, and a timetable for
20 the completion of the remedial construction work.

21 (3.5) (a) BY THE EARLIER OF WHEN A CONSTRUCTION
22 PROFESSIONAL OFFERS TO SETTLE A CLAIM AND OF SIXTY DAYS AFTER A
23 CONSTRUCTION PROFESSIONAL RECEIVES ACTUAL NOTICE OF CLAIM, THE
24 CONSTRUCTION PROFESSIONAL SHALL PROVIDE THE CLAIMANT WITH:

25 (I) COPIES OF ALL PLANS, SPECIFICATIONS, AND SOIL REPORTS
26 RELATED TO THE CLAIMANT'S PROPERTY;

27 (II) MAINTENANCE AND PREVENTIVE MAINTENANCE

1 RECOMMENDATIONS RELATED TO THE CLAIM AND FOR THE CLAIMANT'S
2 PROPERTY;

3 (III) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF
4 EACH CONSTRUCTION PROFESSIONAL WHO PERFORMED WORK OR
5 PROVIDED SERVICES RELATED TO THE CLAIM AND ON THE CLAIMANT'S
6 PROPERTY; AND

7 (IV) COPIES OF EACH INSURANCE POLICY HELD BY THE
8 CONSTRUCTION PROFESSIONAL THROUGH THE DATE OF THE NOTICE OF
9 CLAIM AND FROM THE EARLIER START DATE OF:

10 (A) THE DATE THE CONSTRUCTION OF THE ALLEGED DEFECT WAS
11 SUBSTANTIALLY COMPLETED; OR

12 (B) THE DATE THE CONSTRUCTION PROFESSIONAL SUBSTANTIALLY
13 COMPLETED WORK ON THE ALLEGED DEFECT.

14 (b) A CONSTRUCTION PROFESSIONAL MAY CHARGE REASONABLE
15 COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTIONS
16 (3.5)(a)(I), (3.5)(a)(II), AND (3.5)(a)(IV) OF THIS SECTION.

17 (c) FAILURE TO PROVIDE THE IDENTIFYING INFORMATION
18 REQUIRED IN SUBSECTION (3.5)(a)(III) OF THIS SECTION BARS THE
19 CONSTRUCTION PROFESSIONAL FROM DESIGNATING THE UNIDENTIFIED
20 CONSTRUCTION PROFESSIONAL AS A NONPARTY AT FAULT UNDER SECTION
21 13-21-111.5 (3)(b) IN A SUBSEQUENT ACTION. IF THE CONSTRUCTION
22 PROFESSIONAL FAILS TO PROVIDE THE INFORMATION REQUIRED IN
23 SUBSECTION (3.5)(a)(I) OF THIS SECTION, THE CLAIMANT NEED NOT
24 COMPLY WITH THE CERTIFICATE OF REVIEW REQUIREMENT IN SECTION
25 13-20-803.3 (1).

26 (4.5) (a) WITHIN THIRTY DAYS AFTER THE REJECTION OF AN OFFER
27 MADE PURSUANT TO SUBSECTION (3) OF THIS SECTION, A CLAIMANT SHALL

1 PROVIDE A CONSTRUCTION PROFESSIONAL WITH A WRITTEN PROPOSAL TO
2 HAVE THE CONSTRUCTION DEFECT REPAIRED AT THE CONSTRUCTION
3 PROFESSIONAL'S EXPENSE OR TO SETTLE THE CLAIM.

4 (b) IF THE CONSTRUCTION PROFESSIONAL DOES NOT ACCEPT THE
5 PROPOSAL IN WRITING WITHIN FIFTEEN DAYS AFTER DELIVERY OF THE
6 PROPOSAL, THE PROPOSAL IS DEEMED TO HAVE BEEN REJECTED.

7 (c) IF THE CONSTRUCTION PROFESSIONAL ACCEPTS THE
8 CLAIMANT'S PROPOSAL, THE CONSTRUCTION PROFESSIONAL SHALL PAY THE
9 CLAIMANT'S ATTORNEY FEES AND COSTS INCURRED IN INVESTIGATING THE
10 DEFECT AND PROPOSING THE REPAIR.

11 (7) If an offer by a construction professional is made and accepted
12 OR IF A PROPOSAL MADE BY A CLAIMANT IS ACCEPTED, and if thereafter the
13 construction professional does not comply with ~~its~~ THE offer to remedy
14 or settle a claim for a construction defect OR WITH THE CLAIMANT'S
15 PROPOSAL, the claimant may file an action against the construction
16 professional for claims arising out of the defect or damage described in
17 the notice of claim without further notice.

18 (12) (a) Except as provided in THIS SECTION AND section
19 13-20-806, a claimant shall not recover more than actual damages in an
20 action.

21 (b) IF A CLAIMANT UNREASONABLY REJECTS A REASONABLE
22 WRITTEN OFFER OF SETTLEMENT MADE PURSUANT TO SUBSECTION (3) OF
23 THIS SECTION AND SUBSEQUENTLY COMMENCES AN ACTION AGAINST THE
24 CONSTRUCTION PROFESSIONAL, THE COURT MAY AWARD ATTORNEY FEES
25 AND COSTS TO THE CONSTRUCTION PROFESSIONAL.

26 (c) IF A CONSTRUCTION PROFESSIONAL FAILS TO MAKE A
27 REASONABLE WRITTEN OFFER OF SETTLEMENT PURSUANT TO SUBSECTION

1 (3) OF THIS SECTION, THE LIMITATIONS ON DAMAGES AND DEFENSES TO
2 LIABILITY PROVIDED IN SECTIONS 13-20-804 AND 13-20-806 DO NOT
3 APPLY AND THE COURT MAY AWARD ATTORNEY FEES AND COSTS TO THE
4 CLAIMANT.

5 **SECTION 5.** In Colorado Revised Statutes, **add** 13-20-804.5 as
6 follows:

7 **13-20-804.5. Statute of limitations - middle market housing**
8 **construction claims.** (1) (a) FOR MIDDLE MARKET HOUSING SOLD ON OR
9 AFTER JANUARY 1, 2026, AND EXCEPT AS PROVIDED IN SUBSECTION (1)(b)
10 OF THIS SECTION, A CLAIMANT MUST BRING AN ACTION FOR DAMAGES FOR
11 A CLAIM BASED ON THE CONSTRUCTION OF MIDDLE MARKET HOUSING AND
12 FILED PURSUANT TO THIS PART 8 NOT LATER THAN TEN YEARS AFTER THE
13 SUBSTANTIAL COMPLETION OF THE IMPROVEMENT IN AN ACTION ARISING
14 OUT OF A DEFECTIVE OR AN UNSAFE CONDITION OF THE REAL PROPERTY OR
15 A DEFICIENCY IN THE CONSTRUCTION OR REPAIR OF THE IMPROVEMENT.

16 (b) IF THE DEFENDANT IS A CONSTRUCTION PROFESSIONAL THAT
17 HAS PROVIDED THE CLAIMANT A WRITTEN WARRANTY FOR THE RESIDENCE
18 THAT COMPLIES WITH SUBSECTION (2) OF THIS SECTION, AND IF THE
19 CLAIMANT DISCOVERED OR SHOULD HAVE DISCOVERED THE ALLEGED
20 DEFECT OR DAMAGE WITHIN THE LONGEST APPLICABLE WARRANTY
21 PERIOD, THE CLAIMANT MUST BRING THE SUIT NOT LATER THAN SIX YEARS
22 AFTER THE SUBSTANTIAL COMPLETION OF THE IMPROVEMENT.

23 (2) TO APPLY SUBSECTION (1)(b) OF THIS SECTION TO AN ACTION,
24 A WRITTEN WARRANTY MUST PROVIDE A MINIMUM PERIOD OF:

- 25 (a) ONE YEAR FOR WORKMANSHIP AND MATERIALS;
26 (b) TWO YEARS FOR PLUMBING, ELECTRICAL, OR HEATING,
27 VENTILATION, AND AIR CONDITIONING DELIVERY SYSTEMS; AND

1 (c) SIX YEARS FOR MAJOR STRUCTURAL COMPONENTS.

2 **SECTION 6.** In Colorado Revised Statutes, **amend** 13-20-805 as
3 follows:

4 **13-20-805. Tolling of statutes of limitation.** (1) If a notice of
5 claim is sent to a construction professional in accordance with section
6 13-20-803.5 within the time prescribed for the filing of an action under
7 ~~any~~ THE applicable statute of limitations or repose, then the statute of
8 limitations or repose is tolled until sixty days after the completion of the
9 notice of claim process described in section 13-20-803.5.

10 (2) IF AN ALLEGED CONSTRUCTION DEFECT IS BEING MITIGATED
11 PURSUANT TO SUBSECTION 13-20-803.5, THE STATUTE OF LIMITATIONS OR
12 REPOSE IS TOLLED FOR THE DURATION OF THE MITIGATION.

13 (3) THE TOLLING OF THE STATUTE OF LIMITATIONS UNDER
14 SUBSECTION (1) OR (2) OF THIS SECTION DOES NOT PRECLUDE THE TOLLING
15 OF THE STATUTE OF LIMITATIONS OR REPOSE UNDER THE OTHER
16 SUBSECTION OF THIS SECTION.

17 **SECTION 7.** In Colorado Revised Statutes, **add** 13-20-809 as
18 follows:

19 **13-20-809. Affirmative defenses - middle market housing -**
20 **requirements.** (1) A CONSTRUCTION PROFESSIONAL WHO COMPLIES WITH
21 THIS SECTION IS IMMUNE, IN WHOLE OR IN PART, FROM AN OBLIGATION,
22 DAMAGE, LOSS, OR LIABILITY UNDER THIS PART 8 RELATED TO OR ARISING
23 OUT OF THE CONSTRUCTION OF MIDDLE MARKET HOUSING IF THE
24 CONSTRUCTION PROFESSIONAL CAN DEMONSTRATE BY A PREPONDERANCE
25 OF THE EVIDENCE AN AFFIRMATIVE DEFENSE SPECIFIED IN SUBSECTION (2)
26 OF THIS SECTION.

27 (2) (a) A CONSTRUCTION PROFESSIONAL IS NOT LIABLE FOR A

1 DAMAGE OR DEFECT TO THE EXTENT THE PROFESSIONAL CAN PROVE, AS AN
2 AFFIRMATIVE DEFENSE, THAT THE DAMAGE OR DEFECT WAS CAUSED:

3 (I) BY A WEATHER CONDITION, EARTHQUAKE, OR MANMADE
4 EVENT, SUCH AS WAR, TERRORISM, OR VANDALISM, IN EXCESS OF THE
5 DESIGN CRITERIA EXPRESSED BY THE APPLICABLE BUILDING CODES,
6 REGULATIONS, AND ORDINANCES IN EFFECT AT THE TIME OF ORIGINAL
7 CONSTRUCTION;

8 (II) BY A HOMEOWNER'S UNREASONABLE FAILURE TO TIMELY
9 MITIGATE DAMAGES;

10 (III) BY THE HOMEOWNER OR THE HOMEOWNER'S AGENT,
11 EMPLOYEE, OR CONSTRUCTION PROFESSIONAL BY VIRTUE OF THEIR
12 FAILURE TO FOLLOW THE BUILDER'S OR MANUFACTURER'S
13 RECOMMENDATIONS OR TO DO COMMONLY ACCEPTED HOMEOWNER
14 MAINTENANCE OBLIGATIONS. IN ORDER TO RELY UPON THIS DEFENSE AS
15 IT RELATES TO A CONSTRUCTION PROFESSIONAL'S RECOMMENDED
16 MAINTENANCE SCHEDULE, THE CONSTRUCTION PROFESSIONAL MUST SHOW
17 THAT THE HOMEOWNER HAD WRITTEN NOTICE OF THESE SCHEDULES AND
18 RECOMMENDATIONS AND THAT THE RECOMMENDATIONS AND SCHEDULES
19 WERE REASONABLE AT THE TIME THEY WERE ISSUED.

20 (IV) BY:

21 (A) THE HOMEOWNER'S, THE HOMEOWNER'S AGENT'S, OR AN
22 INDEPENDENT THIRD PARTY'S ALTERATIONS;

23 (B) ORDINARY WEAR AND TEAR;

24 (C) MISUSE OF THE STRUCTURE;

25 (D) ABUSE OF THE STRUCTURE;

26 (E) NEGLIGENCE OF THE STRUCTURE; OR

27 (F) THE USE OF THE STRUCTURE FOR SOMETHING OTHER THAN THE

1 STRUCTURE'S INTENDED PURPOSE.

2 (b) A CONSTRUCTION PROFESSIONAL MAY ASSERT AN AFFIRMATIVE
3 DEFENSE TO THE EXTENT THAT:

4 (I) A PARTICULAR VIOLATION IS COVERED BY A VALID RELEASE
5 OBTAINED BY A CONSTRUCTION PROFESSIONAL; OR

6 (II) A CONSTRUCTION PROFESSIONAL'S OR A THIRD PARTY'S REPAIR
7 WAS SUCCESSFUL IN CORRECTING THE PARTICULAR VIOLATION OF THE
8 APPLICABLE STANDARD.

9 (3) APPLICABLE AFFIRMATIVE DEFENSES ARE PRESERVED FOR ANY
10 CAUSE OF ACTION TO WHICH THIS SECTION DOES NOT APPLY.

11 **SECTION 8.** In Colorado Revised Statutes, 38-33.3-303.5,
12 **amend** (1)(d)(I)(A) and (1)(d)(III) introductory portion; and **add** (5) as
13 follows:

14 **38-33.3-303.5. Construction defect actions - disclosure -**
15 **approval by unit owners - definitions - exemptions.** (1) (d) **Approval**
16 **by unit owners - procedures.** (I) (A) Notwithstanding any provision of
17 law or any requirement in the governing documents, the executive board
18 ~~may~~ HAS THE RIGHT TO initiate ~~the~~ A construction defect action ~~only~~ if
19 authorized within the voting period by owners of units to which a
20 ~~majority~~ AT LEAST SIXTY-FIVE PERCENT of votes in the association are
21 allocated. ~~Such~~ THE approval is not required for an association to proceed
22 with a construction defect action if the alleged construction defect
23 pertains to a facility that is intended and used for nonresidential purposes
24 and if the cost to repair the alleged defect does not exceed fifty thousand
25 dollars. ~~Such~~ THE approval is not required for an association to proceed
26 with a construction defect action when the association is the contracting
27 party for the performance of labor or purchase of services or materials.

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

4 (5) AN EXECUTIVE BOARD THAT IS SUCCESSFUL UNDER A
5 CONSTRUCTION DEFECT CLAIM SHALL FIRST USE MONETARY DAMAGES
6 RECEIVED PURSUANT TO THE CLAIM TO REPAIR THE CONSTRUCTION
7 DEFECT.

8 **SECTION 9. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
10 the expiration of the ninety-day period after final adjournment of the
11 general assembly; except that, if a referendum petition is filed pursuant
12 to section 1 (3) of article V of the state constitution against this act or an
13 item, section, or part of this act within such period, then the act, item,
14 section, or part will not take effect unless approved by the people at the
15 general election to be held in November 2026 and, in such case, will take
16 effect on the date of the official declaration of the vote thereon by the
17 governor.

18 (2) This act applies to construction defect claims brought on or
19 after the applicable effective date of this act.