

May 15, 2017

Colorado State Legislature Finally Passes Construction Defects Reform Legislation

In a dramatic and seemingly overnight change of course, the Colorado House of Representatives unanimously approved House Bill 1279 on April 24, 2017. Days later, on May 4, 2017, HB 1279 passed unanimously in the Colorado State Senate on the third reading. The bill is anticipated to be signed into law by Gov. Hickenlooper, who has applauded the bill as one of the major successes of the 2017 legislative session.

HB 1279—the result of four years of intense debate in the Colorado Legislature over appropriate and fair construction defects reform in the state of Colorado—represents a compromise that both Democrat and Republican representatives overwhelmingly supported. Sponsored in the House by Democratic Rep. Alec Garnett and Republican Rep. Lori Saine, the bill requires condominium homeowners' associations (HOA) to adhere to more restrictive voting and notice requirements prior to initiating construction defect claims against developers.

Specifically, HB 1279 will require the executive board of a HOA, before bringing a construction defect claim against the developer or builder on behalf of all unit owners, to:

- Notify all unit owners and the developer or builder against whom the lawsuit is being considered;
- Call a meeting at which the executive board of the HOA and the developer or builder will have an opportunity to present relevant facts and arguments and at which the developer or builder may, but is not required to, make an offer to remedy the defect; and
- Obtain the approval of a majority of the unit owners after giving them detailed disclosures about the lawsuit, and its potential costs and benefits.

The required meeting commences a 90-day voting period during which the HOA will accept votes for or against proceeding with the lawsuit, and also commences the tolling of any statute of limitations relative to bringing a claim. The bill also requires the HOA to maintain copies of its mailing lists to unit owners and records of votes received in connection with a proposed lawsuit.

Notably, the other five construction defects bills introduced during the 2017 legislative session died on or before May 10, 2017—the last day of the session. These other bills included provisions intended to reduce insurance premiums, more narrowly define construction defects, binding arbitration, builder's right to repair and an alternate informed consent proposal.

Lauded as a solid compromise on construction defects reform, but not a complete fix, supporters of the bill hope that it will jumpstart condominium development, which has fallen to around 3 percent of all housing starts, compared with 20 percent just a decade ago.

If you have questions with respect to HB 1279 and its impact on mitigation of risk in connection with condominium development, feel free to reach out to a member of [Brownstein's Condominium and Planned Community Group](#), [Blair Lichtenfels](#) or [Jonathan Pray](#).

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Brownstein's newly formed Condominium and Planned Community Group boasts a team of real estate attorneys, litigators and policy professionals who provide developers a comprehensive resource to navigate the complexities specific to this asset class.

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