

## What's all the Buzz about Construction Defects?

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by Michelle Berger

Even if you aren't a contractor, you've probably heard a lot about construction defects lately in the print media, radio, television, online or through social media. You might have even stumbled upon a discussion around the office regarding construction defects and the pending changes to Colorado law being considered by the Colorado Legislature and wondered "What exactly is a 'Construction Defect', and why should I care?"

Under Colorado law, homeowners have the right to require contractors to fix certain problems with the construction of their homes, even if these problems appear several years after the home is purchased. While these problems could be as significant as a shifting foundation or as minor as a crack in the sidewalk, all are referred to as "defects".

For many people, their house is not only the place they call home, it's their single most valuable asset; so the right and ability to protect it and have it repaired is important. Unfortunately, the actual lawsuits that have resulted from this right have resulted in unintended consequences for all Coloradoans.

Colorado is one of the top destinations in the country for young adults who are looking to relocate. Many of these new Coloradoans want to put down roots here and live the American Dream by purchasing a home, but the entry-level townhomes and condominiums they are looking to buy are virtually non-existent. The result; spiraling apartment rents.

This lack of entry-level housing can be directly traced to the effects of construction defect litigation. Many of these lawsuits involve townhome or condominium communities. Because of the costs of past construction defect lawsuits, contractors and developers either can't purchase the insurance necessary to defend these lawsuits, or they just don't want to deal with the headaches associated with a construction defect lawsuit, so they have opted not to build these types of homes. So what can be done about it?

One of the things developers have tried to implement to keep down the expense of construction defect claims is to require mediation or arbitration of disputes, instead of litigation, in the rules for their townhome and condominium communities. In the past, a minority of owners in these communities have voted to change the rules to require litigation, and to authorize filing a construction defect claim. This year the Colorado legislature is attempting to fix these loopholes by enacting SB15-177.

SB15-177 provides that even if a community votes to change the rules to provide for litigation for the resolution of disputes, mediation or arbitration will still be required for all construction defect claims. In addition, SB15-177 requires notice to all unit owners of the projected costs, duration and impact to the value of their units from filing a construction defect claim. Finally, SB15-177 requires a majority vote of the unit owners in order to authorize filing a construction defect claim.

If you have any questions regarding construction defects in general or the proposed changes to the current construction defect law contained in SB15-177, please feel free to contact Michelle Berger at [mberger@fostergraham.com](mailto:mberger@fostergraham.com) or at (303) 333-9810.