

Community Connections

SOUTHERN COLORADO
CHAPTER


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Watch Your Back: Construction Defect Legislation Update

By: Christopher Griffiths, Es

This year will be a very big year for construction defect legislation. Many of Colorado's legislative bodies, including the Colorado General Assembly, the City of Lakewood, and the City of Lone Tree are aiming to curtail homeowner rights by passing laws that are designed to protect homebuilders from liability arising from the construction of defectively built homes. These legislative bodies have either passed or intend to pass legislation that will significantly impact Colorado homeowners and community associations.

The City of Lakewood, for example, recently passed an ordinance that gives homebuilders a mandatory "right to repair." The "right to repair" is a unilateral right of the homebuilder to enter onto a homeowner's land or residence and to repair construction defects. Under the ordinance, the homeowner is required to promptly cooperate with the builder and to allow the builder access into their residence.

Although homeowner's can object to the proposed repair, the builder may elect to simply disregard the objection and proceed with the repair anyway. That is, the homebuilder has a unilateral right to enter into a homeowner's residence and repair the construction defect in any manner they see fit—a significant blow to homeowner rights and freedoms. Lakewood's ordinance also prevents a community association from amending its governing documents to remove onerous alternative dispute resolution provisions. These provisions typically require community associations to submit their construction defect claims to arbitration, a process where a private judge decides the matter and no appeals are permitted. Homeowner's forced into arbitration can expect to pay taxes to fund the public court system and then hundreds of dollars an hour to

pay a private judge who will be arbitrating their case.

Meanwhile, at the capitol in Denver, lawmakers there are introducing state-wide construction defect legislation. For example, legislation has been introduced that would reduce the statute of repose in Colorado from six years to less than three years. Under the proposed law, a homeowner's claims could be barred within three years or less whether the homeowner discovered the defect or not. While proponents of the new bill argue that most construction defects are discovered early on, builders routinely provide homeowners with structural warranties that are valid for ten years—evidence that some of the most significant construction defects are expected to be discovered many years following substantial completion.

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A second state-wide bill was also recently introduced and includes many of the same things that were introduced in Lakewood. The new legislation will assuredly disappoint advocates of homeowner rights. Even more disappointing, none of the legislation is aimed at building better homes—just better legal defenses. If you are passionate about protecting homeowner rights, keep an eye out for calls to action from the Colorado Legislative Action Committee concerning the state-wide construct defect legislation.

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