

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 25-0097.01 Yelana Love x2295

HOUSE BILL 25-1272

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House Committees

Transportation, Housing & Local Government

Senate Committees

Local Government & Housing

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.

SENATE
Amended 2nd Reading
April 16, 2025

HOUSE
3rd Reading Unamended
March 31, 2025

HOUSE
Amended 2nd Reading
March 28, 2025

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.

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

SECTION 1. Short title - legislative declaration. (1) The short title of this act is the "Colorado American Dream Act".

(2) The general assembly finds that:

(a) Homeownership is a cornerstone of economic stability, but for many Coloradans, particularly first-time homebuyers, it has become increasingly out of reach. Surveys show that while 90% of renters aspire

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

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

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

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

1 construction in new homes. 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), (5.5), 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) "MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM" OR
4 "PROGRAM" MEANS THE PROGRAM CREATED IN SECTION 13-20-803.3 (1).

5 (5.5) "PROGRAM CLAIM" MEANS ALL ACTIONS FOR DAMAGES,
6 INDEMNITY, OR CONTRIBUTION BROUGHT AGAINST A CONSTRUCTION
7 PROFESSIONAL TO ASSERT A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR
8 THIRD-PARTY CLAIM FOR DAMAGES OR LOSS TO, OR THE LOSS OF USE OF,
9 REAL OR PERSONAL PROPERTY FOR WHICH THE BUILDER IS A PARTICIPANT
10 IN THE PROGRAM OR FOR PERSONAL INJURY CAUSED BY A DEFECT IN THE
11 DESIGN OR CONSTRUCTION OF AN IMPROVEMENT TO REAL PROPERTY FOR
12 WHICH THE BUILDER IS A PARTICIPANT IN THE PROGRAM.

13 (6) "THIRD-PARTY INSPECTION" MEANS A PROGRAM OF
14 INSPECTIONS OF A RESIDENTIAL HOUSING UNIT PERFORMED OVER THE
15 COURSE OF CONSTRUCTION ON THE UNIT AND DESIGNED TO ASSIST THE
16 CONSTRUCTION PROFESSIONAL PERFORMING THE CONSTRUCTION ON THE
17 UNIT IN IDENTIFYING AND RECTIFYING ANY INSTANCES IN WHICH THE
18 WORK BEING PERFORMED BY THE CONSTRUCTION PROFESSIONAL DEVIATES
19 FROM APPLICABLE BUILDING CODES OR CONSTRUCTION STANDARDS. THE
20 CONSTRUCTION PROFESSIONAL WHO SIGNS THE BUILDING PERMIT
21 APPLICATION SHALL, SUBSEQUENT TO FILING THE PERMIT APPLICATION
22 AND PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY, CERTIFY
23 IN WRITING FILED WITH THE BUILDING DEPARTMENT THAT THE
24 THIRD-PARTY INSPECTOR WAS QUALIFIED AND THE INSPECTION COMPLIES
25 WITH THE FOLLOWING REQUIREMENTS FOR ANY COMPONENT, SYSTEM, OR
26 IMPROVEMENT ALLEGED TO BE DEFECTIVE:

27 (a) THE INSPECTION WAS PERFORMED BY EITHER A LICENSED

1 CONSTRUCTION PROFESSIONAL OR A BUILDING CODE INSPECTOR,
2 ELECTRICAL INSPECTOR, ENERGY CONSERVATION CODE INSPECTOR, FIRE
3 CODE INSPECTOR, OR MECHANICAL CODE INSPECTOR, IF SUCH INSPECTOR
4 PROVIDES EVIDENCE OF SUCCESSFUL COMPLETION OF THE MOST RECENT
5 VERSION OF THE COMMERCIAL BUILDING INSPECTOR EXAMINATION BY THE
6 INTERNATIONAL CODE COUNCIL OR ITS SUCCESSOR ORGANIZATION:

7 (I) WHO HAS EXPERTISE DESIGNING, CONSTRUCTING, OR
8 INSPECTING THE COMPONENT, SYSTEM, OR IMPROVEMENT BEING
9 INSPECTED;

10 (II) (A) WHO IS AN INDEPENDENT THIRD PARTY NOT OTHERWISE
11 EMPLOYED BY OR AFFILIATED WITH THE CONSTRUCTION PROFESSIONAL
12 WHO WAS INVOLVED IN THE DEVELOPMENT, DESIGN, OR CONSTRUCTION OF
13 THE COMPONENT, SYSTEM, OR IMPROVEMENT; OR

14 (B) WHO IS AN INSPECTOR ACTING UNDER THE DIRECTION OF AN
15 INSURER PROVIDING A COMMERCIAL GENERAL LIABILITY POLICY OF
16 INSURANCE PURCHASED TO INSURE THE SUBJECT RESIDENTIAL HOUSING
17 UNIT AGAINST PROPERTY DAMAGE RESULTING FROM DEFECTS IN THE
18 DESIGN OR CONSTRUCTION OF THE UNIT;

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

21 (IV) WHO IS NOT DESIGNATED AS A NONPARTY AT FAULT
22 PURSUANT TO SECTION 13-21-111.5 (3)(b); AND

23 (b) THE INSPECTION INCLUDES, FOR EACH COMPONENT, SYSTEM,
24 OR IMPROVEMENT, A SIGNED CERTIFICATION THAT, FOR EACH COMPONENT,
25 SYSTEM, OR IMPROVEMENT, VERIFIES THAT:

26 (I) THE COMPONENT, SYSTEM, OR IMPROVEMENT WAS INCLUDED
27 IN APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS,

1 INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION, UNDER THE
2 VALID SEAL OF AN ARCHITECT OR ENGINEER LICENSED IN COLORADO;

3 (II) (A) PRIOR TO INSPECTION BY THE BUILDING DEPARTMENT, THE
4 COMPONENT, SYSTEM, OR IMPROVEMENT WAS SUBJECT TO A FIELD
5 INSPECTION AND APPROVAL BY THE THIRD-PARTY INSPECTOR WHO
6 CERTIFIES THAT, AT THE TIME OF INSPECTION, THE COMPONENT, SYSTEM,
7 OR IMPROVEMENT WAS SUFFICIENTLY ACCESSIBLE TO DETERMINE
8 COMPLIANCE WITH AND DID COMPLY WITH APPLICABLE MANUFACTURER'S
9 INSTRUCTIONS OR RECOMMENDATIONS, APPROVED CONSTRUCTION
10 DOCUMENTS AND SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED
11 DURING CONSTRUCTION, AND THE APPLICABLE BUILDING CODES.

12 (B) IF THE FIELD INSPECTION DOES NOT INCLUDE EVERY LOCATION
13 WHERE THE COMPONENT, SYSTEM, OR IMPROVEMENT IS CONSTRUCTED,
14 THE SIGNED CERTIFICATION MUST INCLUDE THE PERMIT NUMBER; THE
15 DATE OF INSPECTION; THE TYPE OF INSPECTION; THE CONTRACTOR'S NAME
16 AND LICENSE NUMBER; THE STREET ADDRESS OF THE JOB LOCATION; THE
17 NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INSPECTOR WHO
18 PERFORMED THE INSPECTION; AND A STATEMENT THAT THE INSPECTOR
19 INSPECTED A SUFFICIENT NUMBER OF LOCATIONS TO CONCLUDE WITH A
20 REASONABLE DEGREE OF CERTAINTY THAT EVERY LOCATION OF THE
21 COMPONENT, SYSTEM, OR IMPROVEMENT COMPLIES WITH THE APPLICABLE
22 MANUFACTURER'S INSTRUCTIONS OR RECOMMENDATIONS, APPROVED
23 CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, INCLUDING
24 ADDENDUMS ISSUED DURING CONSTRUCTION, AND THE APPLICABLE
25 BUILDING CODES.

26 (III) THE CONSTRUCTION PROFESSIONAL SUCCESSFULLY REPAIRED
27 OR RESOLVED ANY INSTANCE OF NONCOMPLIANT DESIGN OR

1 CONSTRUCTION IDENTIFIED DURING AN INSPECTION AND THAT THE
2 COMPONENT, SYSTEM, OR IMPROVEMENT COMPLIES WITH THE
3 APPLICABLE MANUFACTURER'S INSTRUCTIONS OR RECOMMENDATIONS AND
4 APPROVED CONSTRUCTION DOCUMENTS AND SPECIFICATIONS, INCLUDING
5 ADDENDUMS ISSUED DURING CONSTRUCTION; AND

6 (c) THE INSPECTION IS NOT AN INSPECTION PERFORMED BY OR ON
7 BEHALF OF A GOVERNMENTAL AUTHORITY HAVING JURISDICTION OVER
8 THE RESIDENTIAL HOUSING UNIT AS A CONDITION OF ANY PERMITTING OR
9 THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY.

10 SECTION 3. In Colorado Revised Statutes, add 13-20-803.3
11 as follows:

12 13-20-803.3. Multifamily construction incentive program -
13 created - construction defect claims against architects and engineers
14 - statute of limitations - affirmative defenses. (1) THE MULTIFAMILY
15 CONSTRUCTION INCENTIVE PROGRAM IS CREATED. ON AND AFTER
16 JANUARY 1, 2026, A BUILDER OF MULTIFAMILY, ATTACHED HOUSING OF
17 TWO OR MORE UNITS MAY PARTICIPATE IN THE PROGRAM BY:

18 (a) PROVIDING A WARRANTY THAT COVERS ANY DEFECT AND
19 DAMAGE AT NO COST TO THE HOMEOWNER FOR A MINIMUM PERIOD OF:

20 (I) ONE YEAR FOR WORKMANSHIP AND MATERIALS;

21 (II) TWO YEARS FOR PLUMBING, ELECTRICAL, AND MATERIALS;

22 AND

23 (III) SIX YEARS FOR MAJOR STRUCTURAL COMPONENTS;

24 (b) HAVING A THIRD-PARTY INSPECTION PERFORMED; AND

25 (c) RECORDING A NOTICE OF ELECTION TO PARTICIPATE IN THE
26 MULTIFAMILY CONSTRUCTION INCENTIVE PROGRAM _____ IN THE REAL
27 PROPERTY RECORDS OF THE COUNTY IN WHICH THE PROPERTY IS LOCATED

1 FOR THE PROJECT INTENDED TO BE COVERED BEFORE THE UNIT IS OFFERED
2 FOR SALE. AFTER RECORDING A NOTICE OF ELECTION TO PARTICIPATE, A
3 BUILDER MAY WITHDRAW FROM THE PROGRAM ONLY BEFORE THE
4 ISSUANCE OF THE LAST CERTIFICATE OF OCCUPANCY FOR THE PROJECT.

5 (2) (a) EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION,
6 A PERSON MUST FILE WITH A COMPLAINT A CERTIFICATE OF REVIEW IN
7 COMPLIANCE WITH SECTION 13-20-602 FOR A CONSTRUCTION DEFECT
8 ACTION THAT IS:

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

11 (II) FOR A PROGRAM CLAIM.

12 (b) THE CERTIFICATE OF REVIEW FILED IN ACCORDANCE WITH
13 SUBSECTION (2)(a) OF THIS SECTION MUST, BASED ON FACTS KNOWN TO
14 THE PARTY FILING THE CERTIFICATE OF REVIEW:

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

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

24 (c) IF A CLAIMANT FAILS TO FILE THE CERTIFICATE OF REVIEW
25 REQUIRED IN THIS SUBSECTION (2), THE COURT SHALL DISMISS THE
26 COMPLAINT AGAINST THE DEFENDANT UNLESS THE CLAIMANT SHOWS
27 GOOD CAUSE FOR THE FAILURE.

1 (3) A CLAIMANT IS NOT REQUIRED TO COMPLY WITH THE
2 CERTIFICATE OF REVIEW REQUIREMENTS OF SUBSECTION (2) OF THIS
3 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 OR REPOSE COULD REASONABLY
10 EXPIRE WITHIN TEN DAYS AFTER THE DATE OF FILING AND, BECAUSE OF
11 THE TIME CONSTRAINT, THE CLAIMANT HAS ALLEGED THAT A CERTIFICATE
12 OF REVIEW BY A THIRD-PARTY ARCHITECT OR ENGINEER COULD NOT BE
13 PREPARED. A CLAIMANT THAT DOES NOT FILE A CERTIFICATE OF REVIEW
14 UNDER THIS SECTION SHALL SUPPLEMENT THE COMPLAINT WITH A
15 CERTIFICATE OF REVIEW WITHIN TWENTY-EIGHT DAYS AFTER THE FILING
16 OF THE COMPLAINT; EXCEPT THAT A COURT MAY, ON MOTION AND FOR
17 GOOD CAUSE, GRANT A CLAIMANT ADDITIONAL TIME TO FILE THE
18 CERTIFICATE OF REVIEW.

19 (4) 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 A SUBSEQUENT CERTIFICATE OF REVIEW THAT COMPLIES
22 WITH SUBSECTION (2) OF THIS SECTION AND SECTION 13-20-602. THE
23 DEFENDANT SHALL FILE A CERTIFICATE OF REVIEW AT LEAST FORTY-FIVE
24 DAYS PRIOR TO ANY TRIAL OR PROCEEDING ON THE CLAIM. IF THE
25 DEFENDANT FAILS TO FILE THE CERTIFICATE OF REVIEW AS REQUIRED IN
26 THIS SUBSECTION (4), A COURT SHALL NOT CONSIDER THE NEGLIGENCE OR
27 FAULT OF THE NONPARTY.

1 (5) SUBSECTIONS (2) TO (4) OF THIS SECTION DO NOT:

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

3 (b) APPLY TO A SUIT OR ACTION FOR THE PAYMENT OF FEES

4 ARISING OUT OF THE PROVISION OF PROFESSIONAL SERVICES.

5 (6) A PERSONAL SHALL NOT ASSERT A PROGRAM CLAIM UNLESS

6 THE DEFECT HAS RESULTED IN ONE OR MORE OF THE FOLLOWING:

7 (a) ACTUAL DAMAGE TO REAL OR PERSONAL PROPERTY;

8 (b) ACTUAL LOSS OF THE USE OF REAL OR PERSONAL PROPERTY;

9 (c) ACTUAL BODILY INJURY OR WRONGFUL DEATH;

10 (d) AN UNREASONABLE REDUCTION IN THE CAPABILITY OF, OR AN

11 ACTUAL FAILURE OF, A BUILDING COMPONENT TO PERFORM AN INTENDED

12 FUNCTION OR PURPOSE; OR

13 (e) AN UNREASONABLE RISK OF BODILY INJURY OR DEATH TO, OR

14 A THREAT TO THE LIFE, HEALTH, OR SAFETY OF, THE OCCUPANTS OF THE

15 RESIDENTIAL PROPERTY.

16 ==

17 (7)(a) (I) IF THE DEFENDANT IS A CONSTRUCTION PROFESSIONAL

18 WHO IS NOT AN ARCHITECT OR ENGINEER AND WHO HAS PROVIDED THE

19 CLAIMANT A WRITTEN WARRANTY FOR THE RESIDENCE THAT COMPLIES

20 WITH SUBSECTION (1)(a) OF THIS SECTION, AND IF THE CLAIMANT

21 DISCOVERED OR SHOULD HAVE DISCOVERED THE ALLEGED DEFECT OR

22 DAMAGE WITHIN THE LONGEST APPLICABLE WARRANTY PERIOD, THE

23 CLAIMANT MUST BRING THE SUIT NOT LATER THAN SIX YEARS AFTER THE

24 SUBSTANTIAL COMPLETION OF THE IMPROVEMENT.

25 (II) IF THE DEFENDANT IS A CONSTRUCTION PROFESSIONAL WHO IS

26 AN ARCHITECT OR ENGINEER, AND THE CONSTRUCTION PROFESSIONAL

27 PERFORMED IN A MANNER CONSISTENT WITH THE DEGREE OF SKILL AND

1 CARE ORDINARILY EXERCISED BY MEMBERS OF THE SAME PROFESSION
2 CURRENTLY PRACTICING UNDER THE SAME OR SIMILAR CIRCUMSTANCES,
3 THE CLAIMANT MUST BRING THE SUIT NOT LATER THAN SIX YEARS AFTER
4 THE SUBSTANTIAL COMPLETION OF THE IMPROVEMENT.

5 (b) IF A CLAIM INVOLVES A DEFECT OR DAMAGE THAT IS COVERED
6 BY THE WARRANTY DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION,
7 THE CLAIMANT SHALL PURSUE ALL REASONABLE REMEDIES AVAILABLE
8 UNDER THE WARRANTY PROCESS BEFORE BRINGING AN ACTION FOR
9 DAMAGES. THE STATUTE OF LIMITATIONS AND REPOSE SHALL BE TOLLED
10 FROM THE DATE THE CLAIMANT FIRST PURSUED A REMEDY AVAILABLE
11 UNDER THE WARRANTY FOR NO MORE THAN ONE YEAR OR UNTIL THE
12 COMPLETION OF THE WARRANTY PROCESS, WHICHEVER IS LONGER.

13 (c) SECTION 13-80-104(2) AND (3) APPLIES TO THE LIMITATION OF
14 CLAIMS IN THIS SUBSECTION (7).

15 (8) (a) FOR PROGRAM CLAIMS, A CONSTRUCTION PROFESSIONAL
16 WHO MAKES A REASONABLE OFFER PURSUANT TO SUBSECTION (9) OF THIS
17 SECTION MAY BE IMMUNE, IN WHOLE OR IN PART, FROM AN OBLIGATION,
18 DAMAGE, LOSS, OR LIABILITY UNDER THIS PART 8 RELATED TO OR ARISING
19 OUT OF THE CONSTRUCTION DEFECT, BUT ONLY WITH RESPECT TO THE
20 PORTION OF THE CLAIMANT'S DAMAGES, IF ANY, THE CONSTRUCTION
21 PROFESSIONAL CAN DEMONSTRATE BY A PREPONDERANCE OF THE
22 EVIDENCE WERE PROXIMATELY CAUSED OR INCREASED BY AN
23 AFFIRMATIVE DEFENSE SPECIFIED IN SUBSECTIONS (8)(b) AND (8)(c) OF
24 THIS SECTION AND NOT BY THE CONSTRUCTION DEFECT.

25 (b) A CONSTRUCTION PROFESSIONAL IS NOT LIABLE FOR A DAMAGE
26 OR DEFECT TO THE EXTENT THE PROFESSIONAL CAN PROVE, AS AN
27 AFFIRMATIVE DEFENSE, THAT THE DAMAGE OR DEFECT WAS CAUSED:

1 (I) BY A WEATHER CONDITION, EARTHQUAKE, OR OTHER NATURAL
2 PHENOMENON IN EXCESS OF THE DESIGN CRITERIA EXPRESSED BY THE
3 APPLICABLE BUILDING CODES, REGULATIONS, AND ORDINANCES IN EFFECT
4 AT THE TIME OF ORIGINAL CONSTRUCTION;

5 (II) BY A HUMAN-CAUSED EVENT, SUCH AS WAR, TERRORISM, OR
6 VANDALISM;

7 (III) BY A HOMEOWNER'S UNREASONABLE FAILURE TO TIMELY
8 MITIGATE DAMAGES AS REQUIRED IN SECTION 13-20-803.5 (1);

9 (IV) BY THE HOMEOWNER OR THE HOMEOWNER'S AGENT,
10 EMPLOYEE, OR CONSTRUCTION PROFESSIONAL BY VIRTUE OF THEIR
11 FAILURE TO FOLLOW THE BUILDER'S OR MANUFACTURER'S MAINTENANCE
12 RECOMMENDATIONS OR TO DO COMMONLY ACCEPTED HOMEOWNER
13 MAINTENANCE OBLIGATIONS. IN ORDER TO RELY UPON THIS DEFENSE AS
14 IT RELATES TO A CONSTRUCTION PROFESSIONAL'S RECOMMENDED
15 MAINTENANCE SCHEDULE, THE CONSTRUCTION PROFESSIONAL MUST SHOW
16 THAT THE HOMEOWNER HAD WRITTEN NOTICE OF THESE MAINTENANCE
17 SCHEDULES AND RECOMMENDATIONS AND THAT THE MAINTENANCE
18 RECOMMENDATIONS AND SCHEDULES WERE REASONABLE AT THE TIME
19 THEY WERE ISSUED AND THAT THE DAMAGE OR DEFECT DID NOT DIRECTLY
20 PREVENT THE HOMEOWNER FROM PERFORMING THE RECOMMENDED
21 MAINTENANCE.

22 (V) AFTER SALE OR TRANSFER OF OWNERSHIP TO THE CLAIMANT,
23 BY:

24 (A) THE HOMEOWNER'S OR HOMEOWNER'S AGENT'S ALTERATIONS;

25 (B) ORDINARY WEAR AND TEAR;

26 (C) MISUSE OF THE STRUCTURE OR COMPONENT;

27 (D) ABUSE OF THE STRUCTURE OR COMPONENT;

1 (E) NEGLIGENCE OF THE STRUCTURE OR COMPONENT; OR

2 (F) THE USE OF THE STRUCTURE OR COMPONENT FOR SOMETHING

3 OTHER THAN THE STRUCTURE'S OR COMPONENT'S INTENDED PURPOSE.

4 (c) A CONSTRUCTION PROFESSIONAL MAY ASSERT AN AFFIRMATIVE

5 DEFENSE TO THE EXTENT THAT:

6 (I) THE DAMAGE WAS CAUSED BY A PARTICULAR VIOLATION

7 COVERED BY A VALID RELEASE OBTAINED BY THE CONSTRUCTION

8 PROFESSIONAL, IF THE RELEASE IS ENFORCEABLE AGAINST THE CLAIMANT,

9 WAS EXECUTED WITH KNOWLEDGE OF THE PARTICULAR VIOLATION, AND

10 DOES NOT VIOLATE SECTION 13-20-806 (7); OR

11 (II) THE CONSTRUCTION PROFESSIONAL'S REPAIR COMPLETED

12 PURSUANT TO SECTION 13-20-803.5 (3) WAS SUCCESSFUL IN CORRECTING

13 THE PARTICULAR VIOLATION AND ANY DAMAGE RESULTING FROM THE

14 VIOLATION OF THE APPLICABLE STANDARD.

15 (d) THE AFFIRMATIVE DEFENSES SET FORTH IN THIS SUBSECTION (8)

16 ARE IN ADDITION TO, AND SHALL NOT LIMIT, IMPAIR, REPLACE, OR

17 OTHERWISE AFFECT, ANY OTHER DEFENSE AVAILABLE TO A CONSTRUCTION

18 PROFESSIONAL UNDER STATUTE OR COMMON LAW.

19 (9)(a) FOR PROGRAM CLAIMS, A CONSTRUCTION PROFESSIONAL

20 AND THE INSURER, AS DEFINED IN SECTION 10-1-102 (13), PROVIDING

21 COVERAGE RELATED TO THE CLAIM SHALL SEND OR DELIVER TO THE

22 CLAIMANT, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR BY

23 PERSONAL SERVICE:

24 (I) AN OFFER TO SETTLE THE CLAIM BY:

25 (A) PAYMENT OF A SUM CERTAIN; OR

26 (B) AGREEING TO REMEDY THE CLAIMED DEFECT DESCRIBED IN

27 THE NOTICE OF CLAIM;

1 (II) A WRITTEN RESPONSE THAT:
2 (A) IDENTIFIES THE STANDARDS THAT APPLY TO THE CLAIMED
3 DEFECT'S CONSTRUCTION OR PERFORMANCE; AND
4 (B) EXPLAINS WHY THE CLAIMED DEFECT DOES NOT REQUIRE
5 REPAIR; OR
6 (III) A WRITTEN RESPONSE THAT EXPLAINS THE CONSTRUCTION
7 PROFESSIONAL'S SCOPE OF WORK AND WHY THE CLAIMED DEFECT IS NOT
8 WITHIN THE WORK AND RESPONSIBILITY OF THE CONSTRUCTION
9 PROFESSIONAL.
10 (b) A WRITTEN OFFER TO REMEDY A CONSTRUCTION DEFECT MUST
11 INCLUDE A REPORT OF THE SCOPE OF THE INSPECTION, THE FINDINGS AND
12 RESULTS OF THE INSPECTION, A DESCRIPTION OF THE ADDITIONAL
13 CONSTRUCTION WORK NECESSARY TO REMEDY THE DEFECT DESCRIBED IN
14 THE NOTICE OF CLAIM AND ALL DAMAGE TO THE IMPROVEMENT TO REAL
15 PROPERTY CAUSED BY THE DEFECT, AND A TIMETABLE FOR THE
16 COMPLETION OF THE REMEDIAL CONSTRUCTION WORK.
17 (c) THE CONSTRUCTION PROFESSIONAL SHALL PROVIDE AN OFFER
18 PURSUANT TO SUBSECTION (9)(a)(I) OF THIS SECTION WITHIN NINETY DAYS
19 AFTER THE DEADLINE TO INSPECT THE PROPERTY AND CLAIMED DEFECT
20 PURSUANT TO SECTION 13-20-803.5 OR A WRITTEN RESPONSE PURSUANT
21 TO SUBSECTION (9)(a)(II) OR (9)(a)(III) OF THIS SECTION WITHIN THIRTY
22 DAYS AFTER THE DEADLINE TO INSPECT THE PROPERTY AND CLAIMED
23 DEFECT PURSUANT TO SECTION 13-20-803.5. NOTWITHSTANDING ANY
24 PROVISION IN A CONTRACT OR ANY REQUIREMENT IN THE GOVERNING
25 DOCUMENTS, IF A CONSTRUCTION PROFESSIONAL REQUESTS AN EXTENSION
26 TO PROVIDE AN OFFER PURSUANT TO SUBSECTION (9)(a)(I) OF THIS
27 SECTION AND THE CLAIMANT DOES NOT AGREE TO THE REQUESTED

1 EXTENSION, THE PARTIES SHALL DESIGNATE A MUTUALLY AGREEABLE
2 THIRD PARTY IN WRITING TO DETERMINE WHETHER THE REQUESTED
3 EXTENSION IS REASONABLE. NOTWITHSTANDING ANY OTHER PROVISION
4 IN THIS SECTION, THE TOTAL TIME TO PROVIDE AN OFFER MUST NOT
5 EXCEED TWO HUNDRED TEN DAYS AFTER THE DATE OF THE NOTICE OF
6 CLAIM BY THE CONSTRUCTION PROFESSIONAL PROVIDING AN OFFER
7 PURSUANT TO SUBSECTION (9)(a)(I) OF THIS SECTION.

8 (d) IF A CLAIMANT UNREASONABLY REJECTS A REASONABLE
9 WRITTEN OFFER OF SETTLEMENT MADE PURSUANT TO THIS SUBSECTION (9)
10 AND SUBSEQUENTLY COMMENCES AN ACTION AGAINST THE
11 CONSTRUCTION PROFESSIONAL, THE COURT MAY AWARD ATTORNEY FEES
12 AND COSTS TO THE CONSTRUCTION PROFESSIONAL.

13 (e) IF A CONSTRUCTION PROFESSIONAL FAILS TO MAKE A
14 REASONABLE WRITTEN OFFER OF SETTLEMENT PURSUANT TO THIS
15 SUBSECTION (9), THE LIMITATIONS ON DAMAGES AND DEFENSES TO
16 LIABILITY PROVIDED IN SUBSECTIONS (2), (5), (6), (7), AND (8) OF THIS
17 SECTION DO NOT APPLY, AND THE COURT MAY AWARD ATTORNEY FEES
18 AND COSTS TO THE CLAIMANT.

19 (f) (I) A CONSTRUCTION PROFESSIONAL'S WRITTEN OFFER OF
20 SETTLEMENT IS REASONABLE, AND A CLAIMANT'S REJECTION OF THE OFFER
21 IS UNREASONABLE, IF THE CLAIMANT RECOVERS A FINAL JUDGMENT IN AN
22 AMOUNT THAT IS LESS THAN THE AMOUNT OFFERED OR THE REASONABLE
23 VALUE OF THE REPAIR OFFERED BY THE CONSTRUCTION PROFESSIONAL.

24 (II) A CONSTRUCTION PROFESSIONAL'S WRITTEN OFFER OF
25 SETTLEMENT IS UNREASONABLE, AND A CLAIMANT'S REJECTION OF THE
26 OFFER IS REASONABLE, IF THE CLAIMANT RECOVERS A FINAL JUDGMENT IN
27 AN AMOUNT THAT EXCEEDS THE AMOUNT OFFERED OR THE REASONABLE

1 VALUE OF THE REPAIR OFFERED BY THE CONSTRUCTION PROFESSIONAL.

2 (10) (a) WITHIN THIRTY DAYS AFTER THE REJECTION OF AN OFFER
3 MADE PURSUANT TO SUBSECTION (9) OF THIS SECTION, A CLAIMANT SHALL
4 PROVIDE A CONSTRUCTION PROFESSIONAL WITH A WRITTEN PROPOSAL TO
5 HAVE THE CONSTRUCTION DEFECT REPAIRED AT THE CONSTRUCTION
6 PROFESSIONAL'S EXPENSE OR TO SETTLE THE CLAIM.

7 (b) IF THE CONSTRUCTION PROFESSIONAL DOES NOT ACCEPT THE
8 PROPOSAL PROVIDED BY THE CLAIMANT PURSUANT TO SUBSECTION (10)(a)
9 OF THIS SECTION IN WRITING WITHIN FIFTEEN DAYS AFTER DELIVERY OF
10 THE PROPOSAL, THE PROPOSAL IS DEEMED TO HAVE BEEN REJECTED.

11 (c) IF THE CONSTRUCTION PROFESSIONAL ACCEPTS THE PROPOSAL
12 PROVIDED BY THE CLAIMANT PURSUANT TO SUBSECTION (10)(a) OF THIS
13 SECTION, THE CONSTRUCTION PROFESSIONAL SHALL PAY THE CLAIMANT'S
14 REASONABLE ATTORNEY FEES AND COSTS INCURRED IN INVESTIGATING
15 THE DEFECT AND PROPOSING THE REPAIR.

16 (11) NOTHING IN THIS SECTION:

17 (a) AFFECTS THE "COLORADO GOVERNMENTAL IMMUNITY ACT",
18 ARTICLE 10 OF TITLE 24, OR SECTION 13-20-806 (7); OR

19 (b) PROHIBITS, LIMITS, OR IMPAIRS A CONTRACTUAL CLAIM OR
20 EXPANDS THE DEFINITION OF "ACTION" IN SECTION 13-20-802.5 (1). ==

21 **SECTION 4.** In Colorado Revised Statutes, 13-20-803.5, **amend**
22 (1), (3), (7), and (12); and **add** (3.5), (3.7), and (13) as follows:

23 **13-20-803.5. Notice of claim process - duty to mitigate.**


24 (1) (a) No later than seventy-five days before filing an action against a
25 construction professional, or no later than ninety days before filing the
26 action in the case of a commercial property, a claimant shall send or
27 deliver a written notice of claim to the construction professional by

1 certified mail, return receipt requested, or by personal service.

2 (b) BEFORE FILING A CLAIM PURSUANT TO THIS SUBSECTION (1)
3 FOR PROGRAM CLAIMS, A CLAIMANT SHALL MITIGATE THE DAMAGE
4 CAUSED BY THE ALLEGED CONSTRUCTION DEFECT. A CLAIMANT SATISFIES
5 THE DUTY TO MITIGATE BY TAKING REASONABLE ACTION TO PREVENT
6 FURTHER DAMAGE FROM THE CONSTRUCTION DEFECT. A CLAIMANT MUST
7 CERTIFY IN THE COMPLAINT THAT THE CLAIMANT HAS SATISFIED THE DUTY
8 TO MITIGATE.

9 (c) IF THE CLAIMANT AND CONSTRUCTION PROFESSIONAL DISPUTE
10 WHETHER THE CLAIMANT HAS SATISFIED THE DUTY TO MITIGATE
11 DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION, THE CLAIMANT MAY
12 PROCEED WITH THE ACTION BUT DOES NOT RECOVER ANY DAMAGES THAT
13 THE CONSTRUCTION PROFESSIONAL PROVES WERE CAUSED BY THE
14 CLAIMANT'S UNREASONABLE FAILURE TO MITIGATE.

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

18 
19 (3) EXCEPT AS PROVIDED IN SECTION 13-20-803.3 (9), within thirty
20 days following AFTER the completion of the inspection process conducted
21 pursuant to subsection (2) of this section, or within forty-five days
22 following AFTER the completion of the inspection process in the case of
23 a commercial property, a construction professional may send or deliver
24 to the claimant, by certified mail, return receipt requested, or personal
25 service, an offer to settle the claim by payment of a sum certain or by
26 agreeing to remedy the claimed defect described in the notice of claim. A
27 written offer to remedy the construction defect shall include a report of

1 the scope of the inspection, the findings and results of the inspection, a
2 description of the additional construction work necessary to remedy the
3 defect described in the notice of claim and all damage to the improvement
4 to real property caused by the defect, and a timetable for the completion
5 of the remedial construction work.

6 (3.5) (a) BY THE EARLIER OF WHEN A CONSTRUCTION
7 PROFESSIONAL, OTHER THAN AN ARCHITECT OR ENGINEER, OFFERS TO
8 SETTLE A CLAIM OR SIXTY DAYS AFTER A CONSTRUCTION PROFESSIONAL
9 RECEIVES ACTUAL NOTICE OF CLAIM, THE CONSTRUCTION PROFESSIONAL
10 SHALL PROVIDE THE CLAIMANT WITH THE FOLLOWING DOCUMENTS AND
11 INFORMATION, TO THE EXTENT THE DOCUMENTS AND INFORMATION ARE
12 WITHIN THE CONSTRUCTION PROFESSIONAL'S POSSESSION, CUSTODY, OR
13 CONTROL:

14 (I) COPIES OF ALL PLANS, SPECIFICATIONS, AND SOIL REPORTS
15 RELATED TO THE CLAIM;

16 (II) MAINTENANCE AND PREVENTIVE MAINTENANCE
17 RECOMMENDATIONS RELATED TO THE CLAIM;

18 (III) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF
19 EACH CONSTRUCTION PROFESSIONAL WHO CONTRACTED TO PERFORM
20 WORK OR PROVIDE SERVICES AND DID PERFORM WORK OR PROVIDE
21 SERVICES RELATED TO THE CLAIM;

22 (IV) ALL DOCUMENTS RELATED TO THE THIRD-PARTY INSPECTION
23 OF THE PROPERTY AND THE NAME AND LAST-KNOWN ADDRESS OF THE
24 INSPECTOR WHO PERFORMED THE THIRD-PARTY INSPECTION; AND

25 (V) COPIES OF EACH INSURANCE POLICY PURCHASED BY THE
26 CONSTRUCTION PROFESSIONAL AND RELATED TO THE CLAIM THROUGH THE
27 DATE OF THE NOTICE OF CLAIM AND FROM THE EARLIER START DATE OF:

1 (A) THE DATE THE CONSTRUCTION OF THE ALLEGED DEFECT WAS
2 SUBSTANTIALLY COMPLETED; OR

3 (B) THE DATE THE CONSTRUCTION PROFESSIONAL SUBSTANTIALLY
4 COMPLETED WORK ON THE ALLEGED DEFECT.

5 (b) A CONSTRUCTION PROFESSIONAL MAY CHARGE REASONABLE
6 COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTIONS
7 (3.5)(a)(I), (3.5)(a)(II), (3.5)(a)(IV), AND (3.5)(a)(V) OF THIS SECTION.

8 (c) FAILURE TO PROVIDE THE IDENTIFYING INFORMATION
9 REQUIRED IN SUBSECTION (3.5)(a)(III) OF THIS SECTION BY THE
10 APPLICABLE DEADLINE FOR DESIGNATING A NONPARTY AT FAULT BARS THE
11 CONSTRUCTION PROFESSIONAL FROM DESIGNATING THE UNIDENTIFIED
12 CONSTRUCTION PROFESSIONAL AS A NONPARTY AT FAULT UNDER SECTION
13 13-21-111.5 (3)(b) IN A SUBSEQUENT ACTION. IF THE CONSTRUCTION
14 PROFESSIONAL FAILS TO PROVIDE THE INFORMATION REQUIRED IN
15 SUBSECTION (3.5)(a)(I) OF THIS SECTION, THE CLAIMANT NEED NOT
16 COMPLY WITH THE CERTIFICATE OF REVIEW REQUIREMENT IN SECTION
17 13-20-803.3 (2).

18 (3.7) (a) BY THE EARLIER OF WHEN A CONSTRUCTION
19 PROFESSIONAL WHO IS AN ARCHITECT OR ENGINEER OFFERS TO SETTLE A
20 CLAIM OR SIXTY DAYS AFTER A CONSTRUCTION PROFESSIONAL RECEIVES
21 ACTUAL NOTICE OF CLAIM, THE ARCHITECT OR ENGINEER SHALL PROVIDE
22 THE CLAIMANT WITH THE FOLLOWING DOCUMENTS AND INFORMATION, TO
23 THE EXTENT THE DOCUMENTS AND INFORMATION ARE WITHIN THE
24 ARCHITECT'S OR ENGINEER'S POSSESSION, CUSTODY, OR CONTROL:

25 (I) COPIES OF ALL APPROVED CONSTRUCTION DOCUMENTS AND
26 SPECIFICATIONS, INCLUDING ADDENDUMS ISSUED DURING CONSTRUCTION,
27 PREPARED BY THE ARCHITECT, ENGINEER, OR CONSULTANTS;

1 (II) THE NAME, LAST-KNOWN ADDRESS, AND SCOPE OF WORK OF
2 EACH ARCHITECT OR ENGINEER WHO PERFORMED WORK OR PROVIDED
3 SERVICES AS A CONSULTANT RELATED TO THE CLAIM AND ON THE
4 CLAIMANT'S PROPERTY; AND

5 (III) COPIES OF EACH INSURANCE POLICY PURCHASED BY THE
6 ARCHITECT OR ENGINEER AND RELATED TO THE CLAIM THROUGH THE DATE
7 OF THE NOTICE OF CLAIM AND FROM THE EARLIER START DATE OF:

8 (A) THE DATE THE CONSTRUCTION OF THE ALLEGED DEFECT WAS
9 SUBSTANTIALLY COMPLETED; OR

10 (B) THE DATE THE ARCHITECTS AND ENGINEERS SUBSTANTIALLY
11 COMPLETED WORK RELATED TO THE ALLEGED DEFECT.

12 (b) AN ARCHITECT OR ENGINEER MAY CHARGE REASONABLE
13 COPYING COSTS FOR THE DOCUMENTS DESCRIBED IN SUBSECTION (3.7)(a)
14 OF THIS SECTION.

15

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

23 (12) _____ Except as provided in THIS SECTION AND section
24 13-20-806, a claimant shall not recover more than actual damages in an
25 action.

26

27 (13) AN INSURER, AS DEFINED IN SECTION 10-1-102 (13), SHALL

1 NOT CANCEL, DENY, OR REDUCE COVERAGE BASED ON ANY CLAIM FOR
2 BENEFITS COVERED BY AN EXISTING LIABILITY INSURANCE POLICY ISSUED
3 TO A CONSTRUCTION PROFESSIONAL BASED ON THE CONSTRUCTION
4 PROFESSIONAL MAKING AN OFFER TO REPAIR OR SETTLE A CONSTRUCTION
5 DEFECT CLAIM PURSUANT TO THIS SECTION. ANY SETTLEMENT OR REPAIR
6 AGREEMENT THAT AFFECTS COVERAGE IS SUBJECT TO INSURER APPROVAL.

7 **SECTION 5.** In Colorado Revised Statutes, **amend** 13-20-805 as
8 follows:

9 **13-20-805. Tolling of statutes of limitation.** (1) If a notice of
10 claim is sent to a construction professional in accordance with section
11 13-20-803.5 within the time prescribed for the filing of an action under
12 ~~any~~ THE applicable statute of limitations or repose, then the statute of
13 limitations or repose is tolled until sixty days after the completion of the
14 notice of claim process described in section 13-20-803.5.

15 (2) IF AN ALLEGED CONSTRUCTION DEFECT IS BEING MITIGATED
16 PURSUANT TO SUBSECTION 13-20-803.5, THE STATUTE OF LIMITATIONS OR
17 REPOSE IS TOLLED FOR THE DURATION OF THE MITIGATION; EXCEPT THAT
18 THE MAXIMUM LENGTH OF TOLLING UNDER THIS SUBSECTION (2) CANNOT
19 EXCEED ONE YEAR.

20 (3) THE TOLLING OF THE STATUTE OF LIMITATIONS OR REPOSE
21 UNDER SUBSECTION (1) OR (2) OF THIS SECTION DOES NOT PRECLUDE THE
22 TOLLING OF THE STATUTE OF LIMITATIONS OR REPOSE UNDER THE OTHER
23 SUBSECTION OF THIS SECTION.

24

25 **SECTION 6.** In Colorado Revised Statutes, 38-33.3-303.5,
26 **amend** (1)(d)(I)(A) and (1)(d)(III) introductory portion; and **add** (5) as
27 follows:

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

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

18 (5) AN EXECUTIVE BOARD THAT IS SUCCESSFUL UNDER A
19 CONSTRUCTION DEFECT CLAIM ~~OR SETTLEMENT~~ SHALL FIRST USE NET
20 MONETARY DAMAGES ~~OR~~ NET PROCEEDS RECEIVED PURSUANT TO THE
21 CLAIM TO REPAIR THE CONSTRUCTION DEFECT.

22 **SECTION 7.** In Colorado Revised Statutes, 29-32-105, **amend**
23 (2)(a) as follows:

24 **29-32-105. Affordable housing commitments - local**
25 **governments - tribal governments - three-year commitment cycle -**
26 **expedited development approval process - eligibility for assistance**
27 **from the fund.** (2) (a) In order to receive financial assistance under this

1 ~~article~~ ARTICLE 32, or for affordable housing projects within a tribal
2 government, municipality, a city and county, or the unincorporated area
3 of a county to be eligible for funding, the tribal government or local
4 government, other than a local affordable housing authority, must
5 establish processes to enable it to provide a final decision on any
6 application for a special permit, variance, or other development permit,
7 INCLUDING A FOR-SALE MULTIFAMILY CONDOMINIUM PROJECT AND
8 excluding subdivisions, of a development project, for which fifty percent
9 or more of the residential units in the development constitute affordable
10 housing not more than ninety calendar days after submission of a
11 complete application, referred to herein as a "fast-track approval process.

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

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