Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Memorandum

January 12, 2024

TO: Interested Persons

FROM: Dan Graeve, Research Analyst, 303-866-3446

SUBJECT: Construction Defects Laws

Summary

This memorandum provides information on Colorado's construction defect laws and the various issues surrounding construction defects in Colorado. It also provides data on housing trends in the state and offers a comparative view of construction defect civil laws in Arizona, California, Colorado, Nevada, and Texas.

Colorado Construction Defects Legislative History

In Colorado, the following bills have made significant additions and changes to construction defect law, dating back to 2001:

House Bill 01-1166 created the Construction Defect Action Reform Act (CDARA).[1] The act distinguishes construction defect lawsuits related to real property from common lawsuits, such as negligence. The act requires claimants to create a list of property defects that must be filed with the court and served on the defendant within 60 days of commencing action. The bill also established laws around actions brought by homeowners' associations (HOAs). However, those provisions were amended in 2017, discussed below.

House Bill 03-1161 made amendments and additions to CDARA, and was dubbed "CDARA II." Many provisions of the bill were introduced in response to numerous class-action lawsuits that had seen large damages awarded to claimants, which construction industry professionals argued were above and beyond reasonable amounts. The bill initiated a "notice of claim" process, requiring residential owners to notify the construction professional no later than 75 days before

[1] Section 13-20-801, *et seq.*, C.R.S.

filing an action, provide them with a list of alleged defects, and allow them the opportunity to inspect the defects and to tender an offer to fix them. Damages were limited to $250,000 in any action brought against a construction professional. The bill also defined the terms "actual damages" and "construction professional," and expanded the act's scope to commercial construction.

House Bill 07-1338 voided the waiver of certain statutory rights and remedies by residential property owners in their transactions with construction professionals. Specifically, the bill prohibits clauses in contracts between home buyers and construction professionals from expressly waiving any of the rights contained in either CDARA or the Colorado Consumer Protection Act. However, these rights may be waived if a homeowner settles with a construction professional after the claim for a defect accrues.

House Bill 10-1394 was enacted following a number of contradictory Colorado Court of Appeals rulings surrounding what constitutes an "occurrence" in a construction defect claim. The bill states that insurance companies must broadly interpret their duty to defend the insured under a commercial general liability policy in cases involving construction defect complaints. The act applies only to insurance policies that were in existence at the time or issued on or after the effective date of the legislation, and guides the pending and future actions of insurers in interpreting liability policies issued to construction professionals.

In *Hoang v. Monterra Homes* (2005), the Colorado Court of Appeals held that faulty workmanship constitutes an "occurrence," triggering an insurance company's duty to defend the insured in a construction defect claim.[2] However, in *General Security Indemnity Company of Arizona v. Mountain States Mutual Casualty Company* (2009), a different panel of the Court of Appeals held that faulty workmanship does not constitute an "occurrence," and therefore construction defect claims against the insured do not need to be defended by an insurance company under a commercial general policy.[3]

For the purposes of guiding pending and future actions in interpreting liability insurance policies issued to construction professionals, HB 10-1394 clarifies the state's policy as follows:

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[2] *Hoang v. Monterra Homes LLC,* 129 P.3d 1028 (Colo. App. 2005).

[3] *General Security Company of Arizona v. Mountain States Mutual Casualty Company,* 205 P.3d 529 (Colo. App. 2009).

- in interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage is an accident unless the property damage is intended and expected by the insured;
- upon a finding of ambiguity in an insurance policy, a court may consider a construction professional's objective, reasonable expectations in the interpretation of an insurance policy issued to a construction professional;
- if an insurance policy provision that appears to grant or restore coverage conflicts with an insurance policy provision that appears to exclude or limit coverage, the court shall construe the insurance policy to favor coverage if reasonably and objectively possible;
- if an insurer disclaims or limits coverage under a liability insurance policy issued to a construction professional, the insurer shall bear the burden of providing a preponderance of the evidence that the policy bars or limits coverage for legal liability and any exception to the limitation, exclusion, or condition if the policy does not restore coverage under the policy; and
- an insurer's duty to defend a construction professional or other insured under a liability insurance policy shall be triggered by a potentially covered liability.

Between 2010 and 2015, a variety of bills were introduced by the General Assembly to amend or address construction defect laws in Colorado, but were not adopted. These bills attempted to change the law to:

- establish legal procedures and limitations related to construction defect claims to make construction professionals involved in transit-oriented development (TOD) immune from claims surrounding noise, odors, light, and other environmental conditions related to TOD;
- provide insurance premium rebates for developers creating multifamily, owner-occupied affordable housing; and
- require the Division of Housing within the Department of Local Affairs to collect and study data on the effects of various factors on new owner-occupied affordable housing in Colorado.

House Bill 17-1279. Since 2015, the General Assembly revisited the issue of construction defects most substantively in 2017, with six bills concerning construction defects having been introduced. While five of those bills did not become law, significant legislation was enacted in *House Bill 17-1279*. The bill made changes to laws regarding lawsuits against contractors filed by HOAs. Specifically, it required an HOA board 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 and the developer or builder will have an opportunity to present relevant facts and arguments and 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.[4]

Because roughly 47 percent of Coloradans live in a "common interest community," as the law describes HOAs, HB 17-1279 was intended to address the perceived chilling effect on certain types of residential development from fear of construction defects litigation initiated by HOA boards by raising the threshold for initiating an action for these types of lawsuits.

Also in 2017, the Colorado Supreme Court ruled in *Vallagio at Inverness Residential Condo. Ass'n, Inc. v. Metro. Homes, Inc.* (395 P.3d 788, Colo. Sup Ct 2017) that a lawsuit filed by an HOA against a developer was unlawful because it violated a previous agreement regarding disputes being brought in arbitration rather than in the courts.

Bills addressing construction defect laws that failed to pass in 2017 attempted to change the law by:

- separately defining and clarifying the term 'construction defect' in CDARA;
- creating a requirement for equitable allocation of the costs of defending a construction defect claim in an action in which more than one insurer has a duty to defend a party;
- requiring that a construction professional has a right to repair a defect or tender an offer of settlement before a claimant can file a lawsuit seeking damages; and
- requiring that a HOA use mediation or arbitration before a lawsuit could be filed.

Finally, *Senate Bill 20-138* would have increased the statute of limitations for actions based on construction defects from six to ten years, but this bill failed to pass.

Housing Units Construction Data and Trends

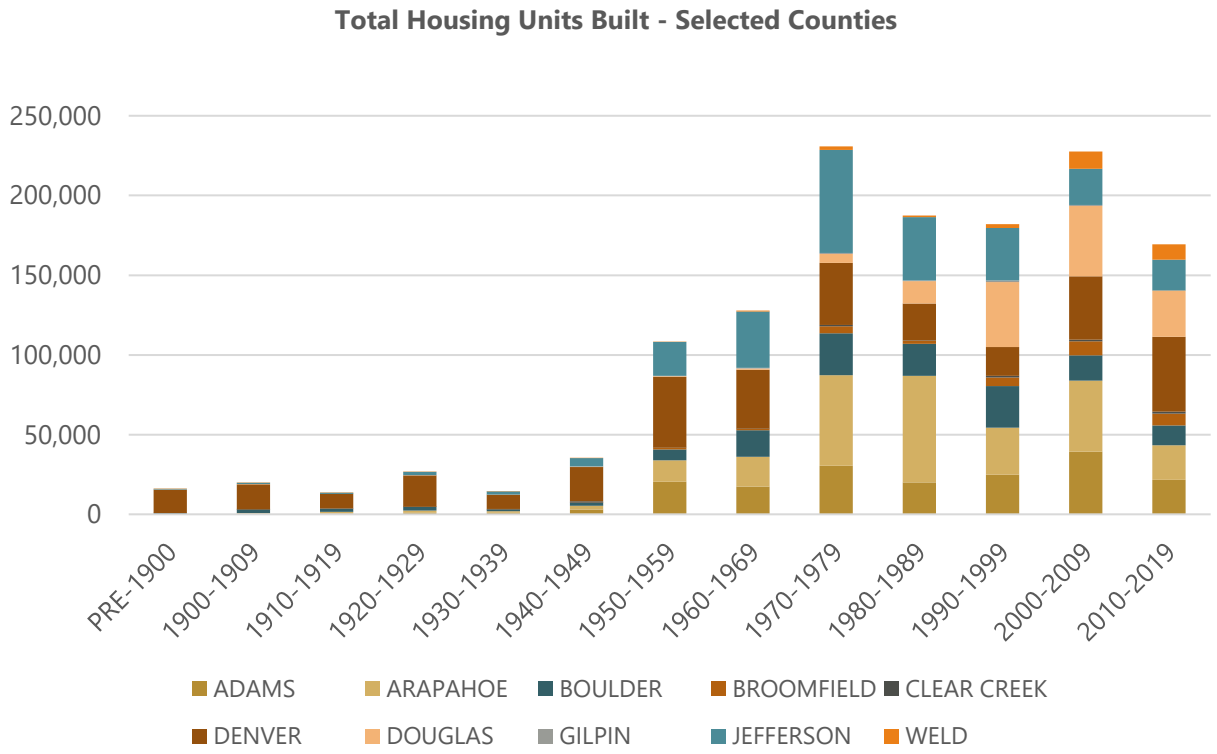
Colorado historical housing data. Colorado has seen periods of variable population and housing growth over the years, which help put more recent growth into context. The following data on housing units built, particularly in the Denver metro area, are intended to address the reasons different types of housing are being built and the impact construction defect concerns might have on these trends. The Denver Regional Council of Governments (DRCOG) provides

[4] Section 38-33.3-303.5, C.R.S.

historical housing data through 2021 in its *Regional Data Catalog*. Data are broken out by municipality, county, and unincorporated areas. These data are presented in ten-year time frames. A snapshot of select county data by decade is presented in Figure 1, along with Denver numbers in Figure 2. Some insight from these numbers are:

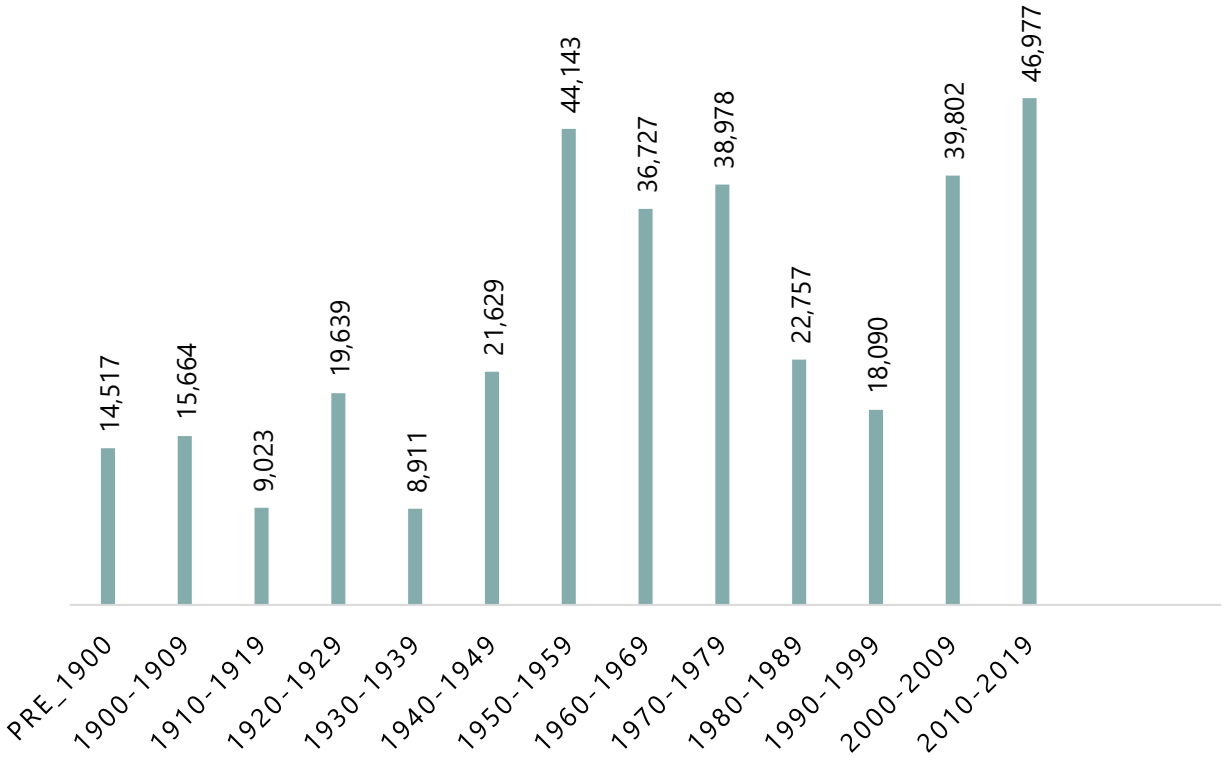
- Nearly 47,000 units were built in the City and County of Denver between 2010 and 2019, making it the most active decade for housing construction on record, slightly edging out the 1950s with over 44,000 units built. At the same time, 7,079 units were built in 2020 and 4,135 were built in 2021, a rate that if continued, would surpass the previous decade.
- Less than half as many units were built in Arapahoe County between 2010 and 2019 as compared to 2000 through 2009. The busiest decade was the 1980s, when nearly 65,000 units were built.
- Just under 65,000 units were built in Jefferson County between 1970 and 1979, far exceeding the second busiest decade, the 1980s, when just under 40,000 units were built.
- Adams County saw just under 40,000 units built between 2000 and 2009, its most prolific decade, followed by the 1970s, the 1990s and the 2010s.

Figure 1
Housing Units Built by Decade



Source: DRCOG Regional Data Catalog.

Figure 2
City and County of Denver Housing Units Built by Decade



Source: DRCOG Regional Data Catalog.

For reference, population growth data from the U.S. Census Bureau indicate that the state saw the most population growth relative to the previous ten-year period in the 1950s, 1970s, and 1990s, as seen in Table 1.

Table 1
Colorado Population Growth

Census	1950	1960	1970	1980	1990	2000	2010	2020
Colorado Resident Population	1,325,089	1,753,947	2,207,259	2,889,259	3,294,394	4,301,261	5,029,196	5,773,714
Percent Change from Previous Decade	18.0%	32.4%	25.8%	30.9%	14.0%	30.6%	16.9%	14.8%

Source: U.S. Census Bureau

New construction and demand. According to a *report* produced by the Common Sense Institute, the housing deficit as of 2022 in Denver was in the range of 13,148 to 30,930 units. A report by the General Assembly's Affordable Housing Transformational Task Force released in January of 2022 paints an even starker picture, stating that, "…225,000 housing units must be built for current Colorado residents in the next couple years, and an additional 100,000 to accommodate new residents."

Housing markets in the state have undergone important shifts in recent years, including higher rates of construction of multifamily apartment rental units as opposed to for-sale units. According to a *2021 Comprehensive Housing Market Analysis* performed by the U.S. Department of Housing and Urban Development (HUD), in January of 2021 the Denver-Aurora-Lakewood Housing Market Area (Denver HMA), which includes Denver and nine surrounding counties, had 16 percent of the estimated three-year demand for sale units under construction, but over 60 percent of the estimated demand for rental units under construction. According to a *2018 HUD analysis*, "approximately 54 percent of households in the Denver County submarket are renters."

Economic forces continue to impact the pace of residential development. Data from the U.S. Census Bureau showing units authorized from 2019 to 2022 in the Denver HMA, as seen in Table 2, reveal a decrease in all categories from 2021 to 2022. An *April 2023 study* by real estate brokerage Point2 Homes analyzed home permits issued in large, medium, and small U.S. metro areas. Colorado is listed among the top ten states in the country in terms of permits issued in 2022, largely due to the continued growth of cities like Colorado Springs and Greeley. At the same time, the Denver metro area ranked among the ten large metro areas with the biggest drops in building permits from 2021 to 2022.

Table 2
New Privately Owned Housing Units Authorized
Denver HMA

	2019	2020	2021	2022
1 unit	11,081	11,234	13,113	10,108
2 units	86	252	602	368
3 or 4 units	104	101	263	196
5 or more units	8,037	8,145	16,028	12,804
Total	**19,308**	**19,732**	**30,006**	**23,476**
Percentage Change from Prior Year		**.02%**	**5.2%**	**-2.2%**

Source: U.S. Census Bureau

Condominiums. The trend of relatively limited new construction of condominiums in the state since the housing recession in the mid-2000s has received considerable attention from policymakers. Condominium construction is especially impacted by the risk of construction defect litigation due to the type of structure, prevalence of HOAs, and unit ownership. According to HUD, condominiums in the Denver County market accounted for only 4 percent of for-sale construction activity from 2008 through 2020. In suburban markets, the number was even lower.

A University of Colorado *report* suggests that since 2010, the state has added one condominium for every 19 apartments built. While Denver has seen an increase in construction of condominiums in recent years, these are generally luxury units priced to account for high construction costs. The cost to build condominiums is generally higher than other types of housing due to financing and insurance premiums, both of which are attributed to litigation risk. For example, according to *HUD data from 2018*, two projects alone made up 60 percent of total condominium construction in the Denver HMA, with all the units in these projects being offered for over $500,000 each, and some units listing for over $3 million. Typically, however, condominiums are more affordable than single-family homes and can often serve as a lower entry point into home ownership.

A 2013 DRCOG *Denver Metro Area Housing Diversity Study* estimated that because of additional costs related to construction defects, developers at that time needed to pay approximately $15,000 more per unit for a condominium project than an apartment building, reducing the profitability of such projects and making more affordable condominiums less viable for developers. DRCOG added that in industry interviews many national builders said they were no

longer pursuing condominium projects in Colorado because of the increased costs and heightened risk of litigation. The 2013 study suggested that, at that time, the most significant impact on the construction of for-sale attached products came from costs related to construction defects litigation. The report also stated that construction insurance costs had grown significantly since the passage of HB 10-1394 as multiple carriers had left the state, although insurance company concerns over their ability to offer policies in the Colorado contractor liability market appear to stem back further than the enactment of the bill.

As discussed, changes to Colorado law in 2017 as a result of HB 17-1279 and the *Vallagio* decision addressed the risk of construction defect litigation brought by HOAs. However, insurance markets are often not immediately responsive to these kinds of policy changes, and as discussed below, they may have not have had a pronounced effect on the liability insurance market.

General Liability Insurance for Builders

The cost and availability of liability insurance coverage for residential construction projects has been affected by changes in state law, most notably by House Bill 10-1394. According to a representative from the Department of Regulatory Agencies (DORA) in 2015, several insurance companies discontinued commercial general liability coverage due to HB 10-1394, although there is no official record. A more recent inquiry with DORA indicated that there are no carriers currently in the market for this product. According to a representative from the American Property Casualty Insurance Association, liability policies in the construction defect space are provided by companies in the "non-admitted" market, meaning they do not meet all state regulations and therefore operate with increased risk. This increases the cost of premiums, so many larger construction companies opt to self-insure for residential construction projects.

Another change since 2010 relates to the work of subcontractors and the fact that projects operate under "wrap" policies that insure the entire project, rather than individual subcontractors carrying separate liability policies, or in some cases operating without coverage at their own discretion. Impacts to the insurance market from changes in law in 2017 are unclear. One challenge with disputes being resolved in arbitration rather than in the courts, as a result of the *Vallagio* decision, is that these settlements remain confidential, preventing insurance carriers from assessing the impact on the financial risk of construction defect coverage.

Comparative View of State-by-State Laws

Table 3 provides a summary of current laws that address residential construction defect issues in the states of Arizona, California, Colorado, Nevada, and Texas. Information on the laws of each state is provided, specifically addressing the statute of repose (the law that provides a time period after which a right to action expires); pre-litigation requirements for claimants wishing to file an action; the opportunity to remedy available to a contractor; any limitation on damages that may be recovered from a construction defect action; the definition of a "construction defect" within that state; and any other relevant law or noteworthy information.

Table 3
Summary of State Laws Addressing Residential Construction Defects

State	Statute of Repose	Pre-litigation Requirements	Opportunity to Remedy	Limitation on Damages	Definition of "Construction Defect"	Additional Statutory Provisions	Notes/Relevant Info
Arizona[5]	Action cannot be brought more than eight years after substantial completion. If a defect is discovered in the eighth year, the homeowner can file an action in the ninth year.[6]	Before filing a dwelling action, the purchaser must deliver notice to the seller specifying the basis of the dwelling action. Seller has the right to inspect dwelling, and purchaser must allow inspection within ten days of seller's request. A purchaser may not file a dwelling action until the seller has completed all intended repairs and replacements of the alleged construction defects. If the seller does not comply with right to remedy requirements, the purchaser may commence a dwelling action. Purchaser cannot reject seller's offer to repair or replace the alleged construction defects, but may request that the repair or replacement be performed by a different construction professional.	Within 60 days of the purchaser's notice of action, the seller must provide a response. The response may include the seller's notice of intent to repair or replace any alleged construction defects, to have the alleged construction defects repaired or replaced at the seller's expense, or to provide monetary compensation to the purchaser. The purchaser may accept or reject an offer of monetary compensation or other consideration, other than repair or replacement and, if rejected, may proceed with a dwelling action on completion of any repairs or replacements the seller intends to make or provide. The seller must make reasonable efforts to begin repairs or replacements within 35 days after the seller's notice of intent to repair or replace was sent.	Purchaser cannot recover attorney and expert fees in a construction defect dwelling action against a seller.	A material deficiency in the design, construction, manufacture, repair, alteration, remodeling, or landscaping of a dwelling that is the result of one of the following: (a) a violation of construction codes applicable to the construction of the dwelling; (b) the use of defective materials, products, components or equipment in the design, construction, manufacture, repair, alteration, remodeling, or landscaping of the dwelling; or (c) the failure to adhere to generally accepted workmanship standards in the community.	Indemnity clauses against liability for defective construction in a contract between a purchaser and a seller are against the public policy of the state and are deemed void. An HOA may file a dwelling action against a seller after it has provided full disclosure in writing to all of its members and held a meeting of its members and board of directors, and as long as it satisfies the additional pre-litigation requirements. The association's board of directors must also authorize the filing of the action.[7]	Arizona's construction defect laws were substantially revised in 2015 to define a construction defect, prevent a purchaser or seller from recovering attorney and expert fees in a construction defect lawsuit, and to further establish the seller's right to repair defects before a homeowner can file a lawsuit. Additional changes were made in 2019 to add actions brought by municipalities and counties to the eight-year statute of repose.

[5] Ariz. Rev. Stat. § 12-1361, et seq.
[6] Ariz. Rev. Stat. § 12-552.
[7] Ariz. Rev. Stat. § 33-2002.

Table 3 (Cont.)
Summary of State Laws Addressing Residential Construction Defects

State	Statute of Repose	Pre-litigation Requirements	Opportunity to Remedy	Limitation on Damages	Definition of "Construction Defect"	Additional Statutory Provisions	Notes/Relevant Info
California[8]	Action may be brought for up to ten years, depending upon the specific component or function of the home that the plaintiff is bringing action on against the builder, and when the suit is filed.	Homeowner must notify builder that building standards have been violated and that a claim is being filed. Builder has 14 days to acknowledge the claim. After acknowledgment, builder can perform an inspection within 14 days. If a second inspection is deemed necessary, builder must request this within 3 days of initial inspection, and then complete second inspection within 40 days.	Builder can make a cash offer or an offer to repair the violation within 30 days of initial or second inspection. Homeowner has the right to request up to three additional contractors that could do the work. Builder must also provide an offer to mediate the dispute, if the homeowner so desires.	Limited to the reasonable value and cost of repairs, relocation and storage costs, lost business income if home was principal place of business, and investigation costs for each violation.	None, but clearly defined "building standards" are provided that must be met.	HOAs are treated as a "purchaser" under this law. Certain conditions can lead to the builder being excused from any obligation or liability, such as an "unforeseen act of nature," or a homeowner not following the builder's or manufacturer's recommendations.	

[8] Cal. Civil Code § Division 2, Pt. 2, Title 7.

Table 3 (Cont.)
Summary of State Laws Addressing Residential Construction Defects

State	Statute of Repose	Pre-litigation Requirements	Opportunity to Remedy	Limitation on Damages	Definition of "Construction Defect"	Additional Statutory Provisions	Notes/Relevant Info
Colorado[9]	Six years, with a two-year extension if defect is discovered in fifth or sixth year after substantial completion.[10] The action must be commenced within two years after a defect is discovered.[11]	"Notice of claim" process, whereby the residential homeowner must notify the construction professional at least 75 days before filing an action. The homeowner must allow the construction professional the opportunity to conduct an inspection of alleged defects, which is to be completed within 30 days of notice.	If a builder wishes to remedy, the builder must deliver an offer of payment to cover defects or agree to remedy, within 30 days of inspection.	A claimant may not recover more than actual damages, unless there is a violation of the Colorado Consumer Protection Act, or if the construction professional does not substantially comply with the Notice of Claim process. A claimant may then receive treble damages. Damages are limited to $250,000 in any action against a construction professional.	None.	An HOA may file a defect action following execution of various notice provisions and approval by a majority vote of unit owners.[12]	See legislative history section in memo above.

[9] Section 13-20-801, et seq., C.R.S.
[10] Section 13-80-104, C.R.S.
[11] Section 13-80-102, C.R.S.
[12] Section 38-33.3-303.5, C.R.S.

Table 3 (Cont.)
Summary of State Laws Addressing Residential Construction Defects

State	Statute of Repose	Pre-litigation Requirements	Opportunity to Remedy	Limitation on Damages	Definition of "Construction Defect"	Additional Statutory Provisions	Notes/Relevant Info
Nevada[13]	Action must be brought within ten years from date of substantial completion. This can be tolled from the time notice of the claim is given, up to one year.	Claimant must provide contractor with a notice of defect before filing an action, which specify in reasonable detail the defects or any damages or injuries to each residence or appurtenance. Claimants must allow contractors to inspect alleged defects. The claimant must be present or have a representative of the claimant present at an inspection and, to the extent possible, reasonably identify the proximate locations of the defects, damages or injuries.	Claimant must allow the contractor a reasonable opportunity to repair the construction defect or cause the defect to be repaired if the contractor makes an election to repair within 90 days of the construction defect notice. These repairs must be completed within 105 days. If the repairs are for a notice received from five or more owners or from an HOA, they must be completed within 150 days. If the contractor has elected not to repair the construction defect, the claimant may bring a cause of action for the construction defect.	If a contractor does not elect to repair or have a construction defect repaired, a claimant can recover the reasonable cost of repair, loss of use, interest, and expert costs. This is limited to construction defects actually proven by the claimant, not merely alleged. Attorney fees are not recoverable damages.	A defect in the design, construction, manufacture, repair or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance and includes, without limitation, the design, construction, manufacture, repair, or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance: • which presents an unreasonable risk of injury to a person or property; or • which is not completed in a good and workmanlike manner and proximately causes physical damage to the residence, an appurtenance or the real property to which the residence or appurtenance is affixed.	If construction defects create an imminent threat to the health or safety of the property's inhabitants, the responsible party must cure the defect in a reasonable time. If the repair is not cured in a reasonable time, the owner may have the defect independently fixed and can recover costs for the repairs from the responsible party. An HOA may only bring a claim on the common elements of a building.	Nevada's construction defect laws were substantially revised in 2015 to limit what constitutes a construction defect, shorten the statute of repose, eliminate recovery of attorney fees in lawsuits, change pre-litigation notice procedures and the claims a homeowner may bring suit against, limit indemnity, and restrict an HOA to bringing a claim on only the common elements of a building.

[13] Nev. Rev. Stat. § 40.615, *et seq*

Table 3 (Cont.)
Summary of State Laws Addressing Residential Construction Defects

State	Statute of Repose	Pre-litigation Requirements	Opportunity to Remedy	Limitation on Damages	Definition of "Construction Defect"	Additional Statutory Provisions	Notes/Relevant Info
Texas[14]	Six years after substantial completion of improvement, so long as a contractor provides a written warranty meeting certain requirements. If no qualifying warranty is provided, the period is ten years. If a claim is brought during the final year, the period is extended for two years from the date of the claim if no warranty, and one year if the warranty requirement is met.[15]	Claimants must give notice 60 days prior to filing an action. They must provide, at the request of the contractor, any evidence that shows alleged defects and the extent of the repairs needed. Claimants must provide the contractor with an opportunity to inspect in the first 35 days following notice of receipt. If a claimant files suit seeking damages in excess of $7,500, the claimant or contractor may file a motion to compel mediation of the dispute. The motion must be filed not later than the 90 days after the suit is filed.	Contractors can make a written offer to repair or have defects repaired by a third party. If claimant rejects the offer, he or she must outline why in reasonable detail, after which the contractor has the chance to make a counter-offer.	Should a claimant reject a reasonable offer from the contractor, or not allow the contractor a reasonable opportunity to inspect or repair the alleged defect pursuant to an accepted offer of settlement, there are limitations on the amount that a claimant may recover. These limitations are based upon the fair market value of the contractor's last offer of settlement, or, if the contractor made an offer to purchase the residence from the claimant, the amount that was offered for this purchase. There are limits on the amount that a claimant may recover, based upon the economic damages caused by a construction defect, such as: the reasonable cost of repairs; replacement or repair of any damaged goods in the residence; engineering and consulting fees; cost of temporary housing during repairs; reduction in current market value after the construction defect is repaired if the construction defect is a structural failure; and attorney's fees. If a contractor does not repair defects as part of an accepted offer, there are no limitations on recoverable economic damages.	A matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.	An HOA has the power to bring a claim on behalf of itself or two or more unit owners.[16]	During the 2023 legislative session, the Texas Legislature passed H.B. 2024 which decreased the statute of repose for construction defect claims.

[14] Tex. Prop. Code Ann. § 27.001-004.
[15] Tex. Civ. Prac & Rem. Code § 16.009.
[16] Tex. Prop. Code Ann. § 82.102(a)(4).