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Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law (Part 2)

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This is Part 2 of a three-part article discussing the many recently enacted construction defect municipal ordinances, including their "right-of-repair" and "consent-to-sue" procedures and arbitration provisions. Potential pitfalls in the construction and application of the ordinances are noted.

At least 16 Colorado home-rule cities have adopted ordinances governing construction defect claims (CD ordinances): Arvada, Aurora, Castle Rock, Centennial, Colorado Springs, Commerce City, Denver, Durango, Fort Collins, Lakewood, Littleton, Lone Tree, Loveland, Parker, Westminster,[1] and Wheat Ridge. More cities are expected to pass similar ordinances in the future. Four general categories of CD ordinances have been adopted:

- notice-repair ordinances—comprehensive ordinances that include pre-suit notice to construction professionals, with rights of entry, inspection, and repair;[2]
- disclosure-voting ordinances—ordinances that mandate specified pre-suit disclosures to homeowner association (HOA) members and lawsuit approval voting requirements;[3]
- substantive law ordinances—ordinances that may limit the type or scope of construction defect claims a claimant may assert;[4] and
- plat note ordinances—ordinances that allow construction professionals to record plat notes generally mandating construction defect arbitration (CD arbitration).[5]

Many cities have adopted ordinances with a combination of these features.

Part 2 of this article examines CD ordinance provisions concerning rights of entry and repair, including objections to repairs and monetary settlement offers in lieu of repair, and associated deadlines; statutes of limitation and repose; repair warranty and later-discovered defects; and common interest community (CIC) pre-suit disclosure requirements. Property owners, construction professionals, their attorneys, and judges must analyze the effects of applicable local ordinances on construction defect claims (CD claims) in conjunction with Colorado's Construction Defect Action Reform Act (CDARA),[6] Homeowner Protection Act (HPA),[7] Common Interest Ownership Act (CIOA),[8] Uniform Arbitration Act (UAA),[9] and common law.

Claimants can be expected to argue that the CD ordinances' procedural, substantive, and evidentiary provisions expressly or impliedly conflict with CDARA, HPA, CIOA, and UAA, making them a challenge to harmonize and creating potentially inconsistent obligations.[10] Potential pitfalls are highlighted under "Practice Pointers," which raise some issues litigators and courts should be prepared to address. Because ongoing legislative action at both the home-rule city and state levels may affect CD ordinances, practitioners should always check for relevant ordinance and statutory updates.

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As in Part 1, the CD ordinances are generally described in terms of common key features that are summarized, and some significant differences are compared. The CD ordinance comparison charts following the articles in this three-part series provide additional details.

Rights of Entry and Repair

Many notice-repair ordinances allow construction professionals a "right of repair" to remedy alleged defective construction.[11] For example, Aurora allows a construction professional to elect to repair the defect within the later of 14 days after the construction professional's defect notice acknowledgment or 30 days after the construction professional's initial inspection or testing.[12] Presumably, this includes repair of any consequential damage flowing from the defect, such as rotted drywall caused by a leaking window, but this result is uncertain because the definition of "construction defect" is unclear.

Practice Pointer: Failure to construe "construction defect" broadly to include all consequential damages may undermine a CD ordinance's purpose to "protect[] homeowners" with "legitimate construction defect claims."[13] This could potentially remove an entire category of CD claim damages from the scope of these ordinances, which the cities likely did not intend.

CD Ordinance Categories

Notice-Repair Ordinances

These ordinances include pre-suit defect notice to construction professionals, with rights of entry, inspection, and repair. Cities with notice-repair ordinances:

Aurora	Lakewood
Centennial	Littleton
Colorado Springs	Lone Tree
Commerce City	Loveland
Durango	Wheat Ridge

Disclosure-Voting Ordinances

These ordinances mandate specified pre-suit disclosures to HOA members and lawsuit approval voting requirements. Cities with disclosure-voting ordinances:

Aurora	Lakewood
Centennial	Littleton
Colorado Springs	Lone Tree
Commerce City	Loveland
Denver	Parker
Durango	Westminster
Fort Collins	Wheat Ridge

Substantive Law Ordinances

These ordinances may limit the type or scope of construction defect claims a claimant may assert. Cities with substantive law ordinances:

Colorado Springs	Parker
Denver	Westminster
Fort Collins	

Plat Note Ordinances

These ordinances allow construction professionals to record plat notes generally mandating construction defect arbitration. Cities with plat note ordinances:

Arvada	Parker
Castle Rock	Wheat Ridge

Duty to Cooperate

If the construction professional elects to make repairs, generally "the claimant may not, directly or indirectly, impair, impede or prohibit the [construction professional] from making repairs."[14] The CD ordinances do not specifically address the effect on the rights of an HOA or unit owner if some unit owners do not cooperate with the inspection, or object to what may be perceived as an unconstitutional invasion of their private property. Generally, an HOA or unit owner has no right to control other unit owners.

If the claimant impairs, impedes, or prohibits the work, "the city or [construction professional] may enforce the claimant's obligations under the [CD ordinance] through court action, and the city may refuse to issue building permits to the claimant unless and until the claimant permits the [construction professional] to make repairs."[15] Colorado Springs similarly authorizes construction professionals to seek relief available under Colorado law when the claimant or HOA impairs, impedes, or prohibits a construction professional from making repairs.[16] Nearly all notice-repair ordinances require the claimants' prompt, good faith cooperation in scheduling the construction professional's repair work.[17]

Practice Pointers: These provisions may put a city in the awkward position of being asked by construction professionals to enforce an ostensibly unreasonable or inadequate repair plan—possibly at the city's cost. No specific private penalties are prescribed if the claimant does not cooperate. It is unknown whether a city might incur liability by facilitating a repair over a property owner's objection.

- If a city will not support a construction professional's repair effort, the construction professional may be left to assert such lack of cooperation as a "failure of condition precedent" defense in a later CD action. Conversely, the claimant may argue that allowing the construction professional to proceed with an inadequate repair is a "futile act," and that the law does not require such futility.[18]
- HOAs and unit owners may wish to seek declaratory relief to establish their rights and obligations, and to verify a CD ordinance's constitutionality and scope, before taking action that might hamper a construction professional's entry and repair rights under a notice-repair ordinance. Construction professionals may ask courts to determine what relief exists to enforce a city ordinance-imposed right of entry and repair and what rights, if any, are waived by private property owners refusing such entry.

Monetary Settlement in Lieu of Repair

In lieu of repair, some notice-repair ordinances allow construction professionals to offer to pay, and HOAs and claimants to accept, a sum certain to settle the claim.[19] For instance, Lone Tree's ordinance states that it does not preclude a claimant and construction professional from reaching a mutual agreement for full or partial claim settlement.[20] Most CD ordinances require acceptance of a monetary offer "within 15 days . . . or such longer period, if any, stated in the offer as the time for acceptance," or it is deemed rejected. Acceptance of an offer made pursuant to a CD ordinance typically releases all claims arising out of the alleged construction

defect.[21] The Aurora, Centennial, Colorado Springs, Littleton, and Loveland notice-repair ordinances go further by allowing construction professionals to offer a settlement payment that can include within its scope defects *first discovered after the settlement*.[22]

The Colorado Springs ordinance varies from others by including a recording provision that allows an offer to be conditioned on execution of a settlement agreement in recordable form to be filed with the clerk and recorder of El Paso County, "so that constructive notice of a binding settlement may be provided to persons acquiring any interest in the subject property."[23] No party is required to make or accept an offer. But if the claimant wants to accept an offer, it must do so in writing within 15 days of receipt of the offer or such longer period as the offer provides.[24]

Practice Pointer: The HPA generally renders "void any pre-dispute waiver of and many limitations on a residential property owner's or homeowners association's ability to recover . . . the damages described by CDARA."[25] Thus, a particular CD ordinance and the HPA may conflict as to whether a waiver and release of future or unknown claims is permissible.[26]

Notices of Repair

All of the notice-repair ordinances require notices of repair to include detailed descriptions of the defects to be repaired, the expected completion date, and contact information for repair contractors, but state no repair completion deadline[27] other than a "reasonable" time.

Lakewood, Lone Tree, and Wheat Ridge require the repair notice to "offer to compensate the claimant for all *damages* within the repair time frame." (Emphasis added.)

Practice Pointer: The Lakewood, Lone Tree, and Wheat Ridge repair damages provisions—which are *uncapped* and *may not be limited by CDARA*—may concern construction professionals and their insurers, given the uncertainty regarding the meaning and scope of construction professionals' "damages" liability. This may incentivize construction professionals to offer monetary settlements in lieu of exposing themselves to damages claims, especially if those damages might include loss of use and rental income.

Other notice-repair ordinances provide that the construction professional must "offer to compensate the claimant for all applicable expenses, if any, incurred by the claimant within the time frame set for the repair" including, without limitation, alternate lodging expenses.[28]

Practice Pointer: Like the damages provisions in Lakewood, Lone Tree, and Wheat Ridge, these expense provisions contain no dollar cap on the construction professional's maximum reimbursement obligation, nor do they expressly limit the nature and kind of reimbursable expenses. These expenses arguably may include increased heating or cooling expenses, lost rent or use, lost time from work, lost wages or lost profits (especially if the claimant works from home), and other expenses, perhaps even consequential or other damages caused by faulty repairs or the repair process. The open-ended nature of the construction professional's reimbursement obligation under all the notice-repair ordinances may deter them from making repairs.

Colorado Springs requires construction professionals to provide information similar to that required by other notice-repair ordinances, but also mandates that construction professionals (1) describe the repair method; (2) waive any statute of limitation or repose defense to any action brought by an HOA or homeowner within the time before actual completion, inspection, and acceptance of the repairs, and within the CD ordinance's warranty period; and (3) indemnify and hold harmless the HOA and affected homeowners from any material or labor lien or claim.[29]

Practice Pointer: Only the Colorado Springs ordinance offers any express lien protection. In other cities, construction professionals could theoretically contract for repairs and fail to pay their subcontractors, and then the subcontractors could lien the property. Under these circumstances, the HOA or homeowner arguably might have little, if any, recourse other than to satisfy the lien and pursue a recalcitrant or insolvent construction professional. This lien exposure could itself possibly nullify the efficacy of the CD ordinances' "right of repair" as conflicting with or undermining state law (as will be discussed more fully in Part 3).

Most of the notice-repair ordinances provide that if the construction professional fails to send or respond to a notice, or to otherwise strictly comply with its obligations during the CD notice and repair process, including completing its repairs within the specified time, *the claimant is released from the CD ordinance's requirements and may proceed with filing an action*, unless the "notice and consent to sue" provisions apply to an HOA-claimant, in which case they must be satisfied first.[30]

Practice Pointer: If strict compliance with a CD ordinance is required, construction professionals may inadvertently render the ordinance inapplicable by failing to satisfy any of its provisions, including, in some cases, its arbitration, disclosure, and pre-suit approval conditions.

Claimant Objections to Repair Plan and Work

Notice-repair ordinances vary on whether they allow pre-repair claimant objections. For instance, Aurora allows written, good faith, pre-repair objections to a construction professional's notice electing repair if the repair will not remedy the defect and if made within 10 days of receiving the repair notice.[31] The construction professional may then modify the repair proposal or proceed with the repair over the claimant's objection.

Practice Pointer: In practice, HOA unit owner and other claimant's counsel would likely prepare an objection notice explaining the alleged repair plan inadequacies and describing how, if the plan were pursued, the claimant would incur additional and unnecessary repair expense to redo the work. In response, construction professionals would likely defend the proposed repair scope and rebut the claimant's objections. This written exchange could continue for an extended time and at great expense while each sides' experts review and re-review each other's positions. Claimant objections might:

- detail alleged anticipated disruptions and inconveniences, and how the repair might address only cosmetic concerns such as spackling, painting, or cracks in walls while purportedly failing to resolve the underlying problem—for example, a defectively constructed foundation that is causing the walls to crack; and
- outline statutes of limitation and repose that could precipitate early legal action, given alleged potential delays and uncertainties (e.g., the expiration of insurance coverage) associated with implementing an allegedly defective repair plan.

The claimant can file suit after complying with the ordinance's notice and consent provisions, if, upon final inspection, the claimant believes in good faith that the repairs are unsatisfactory.[32]

While other notice-repair ordinances generally follow Aurora's template,[33] Colorado Springs allows 15 days, and Lone Tree 10 days, for an optional response to any objections, after which the claimant may submit additional objections to the construction professional's initial rebuttal.[34] Under the Lone Tree ordinance, it appears that the construction professional may not elect to unilaterally perform repairs over an objection, and if the objection is not resolved, the claimant may proceed with legal action.

Practice Pointer: Construction professionals and their insurers may be reluctant to invest in repairs when facing potential liability for the cost to tear out and redo the repairs.

- Construction professionals who proceed with repairs despite cogent objections may invite tort and contract liabilities, as well as CD ordinance repair warranty liability, all of which are discussed more fully below. In addition, the CD ordinance's "right to repair" process may directly conflict with CDARA's non-binding "offer to settle or repair" process,[35] theoretically rendering the ordinance unenforceable. Thus, construction professionals may proceed at significant risk if they incorrectly assume a CD ordinance is enforceable and enter and alter a property based on this assumption, especially over the owner's objection. An unanswered question is whether a good faith belief in the validity and precedence of a local CD ordinance would affect such alleged liability.
- Insurers may question the validity of an ordinance and have other liability exposure concerns resulting in their reluctance to fund, approve, or otherwise cooperate or become involved with an insured's repairs.

Deadline Extensions, Completion, and Review

Each notice-repair ordinance allows construction professionals to obtain a single, short extension of between 10 and 60 days to complete repairs if they expect to exceed the scheduled time.[36] The construction professionals are then required to notify the claimants upon completion or substantial completion of the repairs.[37] Except in Colorado Springs, all of the notice-repair ordinances allow claimants or HOAs 10 days after notice of substantial completion to inspect the repair work and make good faith objections to any problems they identify.[38] Colorado Springs allows 45 days for HOA, unit owner, or other claimant inspection.[39] No ordinance requires formal objections or provides that a failure to make them waives any claimant rights.

Practice Pointer: Observation of completed, extensive repairs may not feasibly allow for the detection of latent defects within the allotted inspection time frame.

In Wheat Ridge, the repair completion provision provides, "[a]ny other claimant may then elect to file an action under C.R.S. § 13-20-803.5 or any other applicable statute or court rule."[40] Although "other claimant" is not defined, one interpretation may include a CIC unit owner whose claim piggy-backs on an HOA's claim.

Practice Pointer: In a large multi-family project involving serious and pervasive defects, it may be challenging, if not practically impossible, for construction professionals to meet local notice and repair requirements within the time allowed, unless exceptionally long completion deadlines are set or the claimant agrees to significant deadline extensions. Disputes over whether repair completion deadlines are reasonable may arise between anxious and inconvenienced property owners and cautious construction professionals desiring ample time to involve their insurers and to complete repairs. If construction professionals grant themselves unreasonably long repair schedules, claimants may contend that they failed to meet their obligations and waived the applicable CD ordinance's right to repair.

Under all of the CD ordinances, if the claimant deems repairs unsatisfactory, the claimant may proceed with filing a CD action, unless the "notice and consent to sue" provisions apply to an HOA-claimant, in which case they must first be satisfied.

Practice Pointer: A notice-repair ordinance repair provision may conflict with CDARA's voluntary "offer to repair" procedure, thereby denying HOAs and homeowners remedies and damages guaranteed by the HPA and CDARA. Therefore, CD ordinances could transform what has historically been a voluntary and amicable warranty or statutory repair process into an involuntary and adversarial process. Mandating that HOAs and homeowners allow contractors or others to enter their private homes to perform work without the entrant assuring appropriate personal or property security measures, such as insurance, surety and fidelity bonds, and background checks, raises constitutional and other concerns, which will be discussed more fully in Part 3.

Statutes of Limitation and Repose

When a claimant timely provides a defect notice, notice-repair ordinances generally toll the applicable limitations or repose period for 60 days after completion of the notice process, including completion of any repairs.[41] Most of these provisions apply automatically and require no action by the claimant or construction professional during the notice process and repair period, if the construction professional elects to make repairs. Whether state statutory limitations and repose periods may be tolled by local ordinances is an undecided question that will be discussed more fully in Part 3.

Colorado Springs requires a construction professional offering repairs to deliver to the HOA and affected homeowners "a statement that the [construction professional] waives and will not assert any statute of limitation or repose as a defense to any action brought by the [HOA or homeowners] within the time prior to the actual completion, inspection, and acceptance of the repairs … and any warranty period provided [by the ordinance]."[42] The statutes of limitations or repose may start anew upon the completion of any defect repairs, and this may apply to a construction pro-

fessional's negligent failure to identify defective construction or resulting damage during the initial inspection process.[43]

Practice Pointer: Presumably the notice process referred to in these tolling provisions includes the time during which the construction professional may conduct or schedule an inspection, even if the construction professional never actually requests an inspection, or schedules an inspection but does not complete it. This result is not certain, as construction professionals may urge that the CD ordinance only tolls the limitations period for 60 days after the claimant sends a notice if no inspection occurs. The limitations period tolling also may be affected by challenges to the CD ordinance's effectiveness: a claim rendered timely by a CD ordinance's tolling provisions could possibly be rendered untimely if the provisions conflict with, and are preempted and superseded by, CDARA, the HPA, or another statutory or constitutional provision. Courts may be asked to consider equitable remedies or to apply estoppel principles under these circumstances.

Repair Warranty and Later-Discovered Defects

Most notice-repair ordinances have repair warranty and later-discovered defect provisions. For instance, Aurora's repair warranty provides, "repair work performed by the builder shall be warranted against *material defects* in design or construction for a period of two years, which warranty shall be in addition to any express warranties on the original work." (Emphasis added.)[44] This and other ordinances do not define "material" defect, nor do they expressly immunize construction professionals against liability for non-material defects under the common law or CDARA. Colorado Springs' CD ordinance provides a one-year repair warranty against material defects in design or construction, in addition to all warranties on the original construction.[45] However, if a construction professional fails to perform any warranty work regarding a previously repaired defect within a reasonable time after receipt of a warranty claim, the claimant may sue immediately, subject to the CD ordinance's "disclosure and consent to sue" requirements, if applicable.[46]

Aurora's subsequently-discovered defects provision states, "alleged construction defect[s] discovered after repairs have been completed shall be subject to the same requirements of this article if the builder did not have notice or an opportunity to repair the particular construction defect."[47] Several other notice-repair ordinances track this language.[48]

Practice Pointer: As to defects that *were the subject* of the original defect notice, it is unclear whether the entire procedure must start over; this could lead to a potentially endless cycle of notice-repair processes and ineffectual warranty repairs. Because such an interpretation could effectively result in the claimant allegedly being unable to obtain lasting relief, courts unreceptive to such a result may be asked to allow suit to proceed.

It appears that the CD ordinances require the entire process to begin anew for defects that were not the subject of the original defect notice. The Lakewood ordinance contains a "subsequently discovered defects" provision that states that any alleged construction defect "discovered after repairs have been completed" shall be subject to the ordinance's requirements "if the [construction professional] did not have notice or an opportunity to repair the particular defect."[49] This language impliedly suggests that construction professionals only get "one bite at the apple" to repair any CD of which they are given notice.

Practice Pointer: Construction professionals may argue that problems that arise following a failed repair constitute subsequently discovered defects in the repair itself, unrelated to the original construction defect. Because claimants must provide notice "upon . . . discovery" of a defect, if this argument prevails, homeowners could find themselves in a protracted process with multiple notice and repair procedures applying to discrete defects.

It is unclear whether CD ordinance-imposed warranties extend to repair of resulting damage flowing from a failed repair, such as moisture intrusion and rot. Recovery of such direct consequential damages may be found to be within the contemplation of the statute or the parties at the time of the repair, and, therefore, could be actionable under contract and tort theories.

Practice Pointer: Claimants' counsel may wish to put construction professionals on notice of the risk of such potential damages before any repairs begin, especially if the proposed repairs will occur over a claimant's objections.

None of the CD ordinances' repair warranties state that they provide an exclusive remedy and, therefore, common law tort claims may overlap such warranty claims.[50] This may inure to the benefit of construction professionals if their liability insurance policies cover those tort claims.

CIC Pre-Suit Disclosures

Many CD ordinances contain procedures for a CIC to inform unit owners in advance of anticipated CD litigation and to obtain

their approval to proceed. These provisions impose extensive preconditions to suit not found in CIOA or CDARA and create the potential for limitations and repose periods to expire before suit can be authorized. In addition, because most ordinances apply to *all* CD claims, even the smallest claims are subject to the ordinances' potentially expensive and onerous suit-approval procedures.

Most CD ordinances provide that 60 days before filing a CD action governed by CDARA, the claimant (which seems logically limited to HOAs, even if individual unit owners might qualify) must mail or deliver written notice to all unit owners at their last known addresses.[51] A few ordinances mandate such notice 60 days *before* service of a CDARA notice of claim under CRS § 13-20-803.5,[52] creating a complicated two-tiered notice process under state and local laws.

Pre-suit notices generally must disclose:

- the nature of the action and relief sought;
- the amount of fees and expenses the HOA board may incur in pursuing the action, including those it may be liable for if it does not prevail;
- an estimate of the repair cost, or of the reduction in unit value if the repairs are not made;
- an estimate of the effect on the marketability of units not subject to the action, including refinancing effects;
- how the HOA proposes to fund the action, including special assessments or revenues;
- the anticipated duration and likelihood of the action's success;
- whether the construction professional offered repairs and, if so, whether they were made; and
- the steps the construction professional has taken to address the alleged defects, including any claim acknowledgment, inspection, election to repair, and repairs.[53]

Colorado Springs requires similar unit owner disclosures before filing suit, but without a time limit, and only for CD claims that affect five or more units.[54] Colorado Springs and Westminster also require the additional disclosure of: (1) the last date a claim may be filed under the statutes of limitation and repose; (2) the expected recovery if the HOA prevails; (3) the contingent fee percentage and other potential costs of litigation; and (4) a statement that until the CD claims are finally resolved, unit market values may be adversely affected by litigation.[55]

Practice Pointer: The Denver, Fort Collins, Parker, and Westminster requirement that unit owners be given 60-day advance notice of suit before the CDARA notice of claim process (NCP) begins means that the HOA board must inform the unit owners of the details of and circumstances surrounding the filing of a CD lawsuit *before* alerting the construction professionals to the problem, *before* giving them a chance to address the problem, and *without* trying to work things out informally, under CDARA's NCP. This provision may counter the overarching intent of these CD ordinances to encourage informal dispute resolution before suit is contemplated. The timing of this disclosure also could conflict with the need to file suit to meet statute of limitations and repose deadlines. If an HOA files suit precipitously to avoid missing a statutory suit deadline, a sued construction professional might move to dismiss, asserting a failure to satisfy a CD ordinance's pre-suit disclosure and approval

requirement. Conversely, an HOA that delays filing suit to meet a CD ordinance's procedural requirements risks having its claims barred by the applicable state statute of limitation or repose. While some CD ordinances provide for tolling of the limitations period, the guaranteed application and effectiveness of such tolling provisions is uncertain.

Satisfying the Pre-Suit Disclosure Requirements

The following practice pointers are offered from the standpoint of an HOA for satisfying the main disclosure categories; construction professionals may disagree with some or all of these suggestions and challenge any deviation from the required disclosures, which may invite pushback from HOAs on First Amendment grounds:

Litigation Funding. As a practical matter, litigation funding financial risks to the HOA may be limited because most significant CD litigation is handled on a contingent fee basis, with cost recapture limited to any recovery.[56] However, smaller claims based on an hourly-based attorneys' fee would require an estimated fee range. Claimants should consider that because many mandatory disclosure and consent-to-sue requirements contain no monetary threshold, the administrative costs involved in bringing a claim may make it cost-prohibitive to bring suit on anything but the largest claims.[57]

Repair Costs and Effect on Marketability. Estimating repair costs may require hiring consulting construction professionals. Estimating the effect on the CIC property's value and marketability if repairs are not made might be determined by allocating the estimated repair cost, plus estimated stigma damages, to each unit pro rata based on the unit's common expense liability. This methodology must account for the fact that known defects must be disclosed by sellers to buyers, and that the cost of repairing such defects generally must be allocated pro rata among all unit owners under CIOA. If HOA counsel believes that viable legal claims exist and there is a reasonable potential for recovery of repair cost damages, long-term unit marketability should not be adversely affected if legal action is prudently pursued; in fact, marketability arguably could be improved.

Likelihood of Success. Evaluating the likelihood of success of a CD lawsuit involves a complicated analysis, derived from counsel's mental impressions and professional judgment. In evaluating this disclosure requirement, counsel should consider that this disclosure may conflict with CIOA's more limited pre-suit disclosure requirements.[58] And unlike CIOA, some CD ordinances do not expressly protect attorney–client privilege and attorney work product from disclosure, and may ignore CIOA's executive session privilege.[59] Other ordinances, including those in Colorado Springs, Denver, Fort Collins, Parker, and Westminster explicitly protect attorney–client and other privileged communications and bar asserting the pre-suit notice as a waiver of any privilege or statute of limitations.[60]

This disclosure requirement might arguably be met, while preserving applicable privileges, by stating, for example, "The Board has concluded, following confidential consultation with counsel pursuant to Colorado statute, that a construction defect lawsuit is likely to be worth the time and resources devoted to it." A more extensive disclosure could be provided upon request to unit owners who sign reasonable confidentiality and non-disclosure agreements.

Statutes of Limitation Deadlines. HOA counsel should be conservative in assessing applicable statutes of limitation and repose dates, considering that these dates often depend on unknown, speculative, or disputed facts and legal uncertainties, as well as the fact that sued construction professionals may offer the disclosed date as an admission during litigation.

The Colorado Springs and Westminster statutes of limitation disclosures potentially conflict with CDARA's tolling provisions. Denver, Fort Collins, and Parker track the Colorado Springs pre-suit disclosure requirements, but they do not limit their application to CD claims that affect five or more units.[61] They also require additional mandatory disclosures, some of which may be difficult to satisfy. For example, Fort Collins and Parker require the disclosure to state that if the HOA loses its lawsuit, its board expects the HOA "will be required to pay its own attorney fees and costs, including expert witness and consultant fees."[62] Denver's ordinance is the same, except that it does not require the HOA to state it will have to pay its own attorney fees.[63] These mandated provisions could be misleading if CD counsel advances litigation costs and expenses and works on a contingency fee basis, so that the HOA never will pay anything out of pocket toward these fees and costs. These matters should be clearly explained in the disclosure.

Suit Financing. Denver, Fort Collins, Parker, and Westminster additionally mandate disclosure to unit owners that they "will have difficulty refinancing and prospective buyers of the affected units will have difficulty obtaining financing," and "certain federal underwriting standards or regulations prevent refinancing or obtaining a new loan in projects where a construction defect is claimed."[64] This disclosure could be misleading if it does not also advise that: (1) Colorado law already requires the disclosure of known defects to prospective buyers, with obvious effects on marketability; (2) some lenders demand information about known defects on loan applications, and that a failure to make such loan disclosure could constitute fraud; and (3) the HOA's pursuit of CD claims may ultimately preserve, if not enhance, the value of CIC property and its units by allowing recovery of repair costs from third-parties rather than through unit owner assessments.

A potentially serious and presumably unintended consequence of these mandatory pre-suit disclosure and consent requirements is the enormous cost and effort necessary to satisfy them, even for modest claims. For example, if an HOA hires a company to repair a common area fence for $1,500 and the repair fails the next day, under most CD ordinance pre-suit disclosure and consent requirements, it would likely never make economic sense for the HOA to pursue the claim.[65] Even a $15,000 claim might not be cost-beneficial to pursue. In contrast to the CD ordinances, CIOA's less onerous and less controversial pre-suit disclosure requirements are triggered only if the CD claims involve five or more unit owners.[66]

Conclusion

Many CD ordinance provisions overlap with CDARA, CIOA, and the UAA. Conflicts create uncertainty and the potential for protracted litigation. Moreover, even if enforceable per their terms, CD ordinances may expose construction professionals to new and unexpected liabilities, while hamstringing their liability insurers.

Part 3 will discuss multi-family development pre-suit approval requirements; survey substantive, preemption, and state and fed-

eral constitutional concerns that CD ordinances implicate; and provide a streamlined practitioner's issues checklist for claimant and construction professional attorneys.

Notes

1. Because Westminster's CD ordinance passed while this article was in process, analysis of its provisions is more limited than other ordinances, and discussion of it may be omitted from some parts.

2. Aurora Code Ord. §§ 22-701 et seq.; Centennial Mun. Code §§ 18-10-10 et seq.; Colorado Springs Code Ord. §§ 6.14.101 et seq.; Commerce City Code Ord. Ch. IX §§ 5-19001 et seq.; Durango Code Ord. Art. XI §§ 6-1 et seq.; Lakewood Mun. Code §§ 14.26.010 et seq.; Littleton City Code §§ 4-7-1 et seq.; Lone Tree Mun. Code §§ 18-12-10 et seq.; Loveland Mun. Code §§ 15.58.010 et seq.; Wheat Ridge Code L. §§ 26-1301 et seq.

3. Aurora Code Ord. §§ 22-701 et seq.; Centennial Mun. Code §§ 18-10-10 et seq.; Colorado Springs Code Ord. §§ 6.14.101 et seq.; Commerce City Code Ord. Ch. IX §§ 5-19001 et seq.; Denver Code Ord. §§ 10-201 et seq.; Durango Code Ord. Art. XI §§ 6-1 et seq.; Fort Collins City Code Art. VIII §§ 5-350 et seq.; Lakewood Mun. Code §§ 14.26.010 et seq.; Littleton City Code §§ 4-7-1 et seq.; Lone Tree Mun. Code §§ 18-12-10 et seq.; Loveland Mun. Code §§ 15.58.010 et seq.; Parker Mun. Code §§ 11.20.100 et seq.; Westminster Ord. No. 3867, §§ 11-15-1 et seq.; Wheat Ridge Code L. §§ 26-1301 et seq.

4. Colorado Springs Code Ord. §§ 6.14.101 et seq.; Denver Code Ord. §§ 10-201 et seq.; Fort Collins City Code Art. VIII §§ 5-350 et seq.; Parker Mun. Code §§ 11.20.100 et seq.; Westminster Ord. No. 3867, §§ 11-15-2(A) through (C).

5. Arvada Land Dev. Code § 3.8.3(D); Castle Rock Mun. Code § 17.24.050; Parker Mun. Code § 13.07.130; Wheat Ridge Code L. § 26-420. Aurora adopted Resolution 2015-92 as a companion to its notice-repair ordinance to express a "policy to honor the request of the builder or developer of a condominium or multi-family project to include a restriction or limitation on a subdivision plat" as expressed in the resolution and as further discussed below. Westminster Ord. No. 3867, § 11-15-4 contains an ADR anti-amendment provision.

6. CRS §§ 13-20-801 et seq.

7. HB 07-1338, codified as CRS §§ 13-20-806(7) and -807.

8. CRS §§ 38-33.3-101 et seq.

9. CRS §§ 13-22-201 et seq.

10. For a comprehensive discussion of CDARA, HPA, CIOA, and UAA in the CD claim setting, *see* Benson, ed., 2 *The Practitioner's Guide to Colorado Construction Law*, §§ 14.1 et. seq. (CBA-CLE 2d ed. 2015); and Sandgrund et al., *Residential Construction Law in Colorado* (CBA-CLE 5th ed. 2015).

11. Aurora Code Ord. § 22-706; Centennial Mun. Code § 18-10-60; Colorado Springs Code Ord. § 6.14.203; Commerce City Code Ord. § 5-19006; Durango Code Ord. § 6-6; Lakewood Mun. Code § 14.26.060; Littleton City Code § 4-7-6; Lone Tree Mun. Code § 18-12-60; Loveland Mun. Code § 15.58.060; Wheat Ridge Code L. § 26-1306.

12. Aurora Code Ord. § 22-706(a).

13. Aurora Ord. No. 2015-35 preamble at 2; Aurora Resolution No. 2015-92 preamble. Other cities' ordinances contain similar statements of legislative purpose. *See* Castle Rock Ord. 2015-59 Subject Matter Summary and preamble; Centennial Ord. No. 2015-O-29 preamble; Colo. Springs Ord. No. 15-93 preamble; Commerce City Ord. No. 2060 preamble; Durango Ord. No. O-2016-13 preamble; Lakewood Ord. No. O-2014-21 preamble; Littleton Ord. No. 25, Series 2015, preamble p.2, ll. 30; Lone Tree Ord. No. 15-01, Series of 2015, Art. 2 Declarations of Policy, ¶ I; Loveland Ord. No. 6004, preamble; Wheat Ridge Ord. No. 1680, Series 2015, preamble.

14. Aurora Code Ord. § 22-706(a); Centennial Mun. Code § 18-10-60(a); Colorado Springs Code Ord. § 6.14.203; Commerce City Code Ord. § 5-19006(a); Durango Code Ord. § 6-6(a); Lakewood Mun. Code § 14.26.060(A); Littleton City Code § 4-7-6(A); Lone Tree Mun. Code § 18-12-60(a); Loveland Mun. Code § 15.58.060(A); Wheat Ridge Code L. § 26-1306(A).

15. Aurora Code Ord. § 22-706(f); Centennial Mun. Code § 18-10-60(f); Loveland Mun. Code § 15.58.060(F).

16. Colorado Springs Code Ord. § 6.14.203(D).

17. Aurora Code Ord. § 22-706(b); Centennial Mun. Code § 18-10-60(b); Colorado Springs Code Ord. § 6.14.203(C); Commerce City Code Ord. § 5-19006(a); Durango Code Ord. § 6-6(b); Lakewood Mun. Code § 14.26.060(B); Littleton City Code § 4-7-6(B); Loveland Mun. Code § 15.58.060(B); Wheat Ridge Code L. § 26-1306(B).

18. *Cf. New Design Constr. Co. v. Hamon Contractors, Inc.*, 215 P.3d 1172, 1180 (Colo.App. 2008) (law does not require a party to perform futile acts as a condition precedent to asserting its rights).

19. Aurora Code Ord. § 22-709; Centennial Mun. Code § 18-10-90; Colorado Springs Code Ord. § 6.14.203; Littleton City Code § 4-7-6(F); Lone Tree Mun. Code § 18-12-60(e); Loveland Mun. Code § 15.58.090.

20. Lone Tree Mun. Code § 18-12-60(e).

21. Aurora Code Ord. § 22-709; Centennial Mun. Code § 18-10-90; Colorado Springs Code Ord. § 6.14.203(A); Littleton City Code § 4-7-6(F); Loveland Mun. Code § 15.58.090.

22. Aurora Code Ord. § 22-709; Centennial Mun. Code § 18-10-90; Colorado Springs Code Ord. § 6.14.203(A); Littleton City Code § 4-7-6(F); Loveland Mun. Code § 15.58.090.

23. Colorado Springs Code Ord. § 6.14.203(A).

24. *Id.*

25. Sandgrund et al., "The Homeowner Protection Act of 2007," 36 *The Colorado Lawyer* 79 (July 2007), summarizing CRS §§ 13-20-806(7) and -807. *See also* Benson, *supra* note 10 at § 14.2.5, "Colorado's Homeowner Protection Act of 2007 (HPA)."

26. Part 3 of this article will discuss which law prevails.

27. Aurora Code Ord. § 22-706(a); Centennial Mun. Code § 18-10-60(a); Colorado Springs Code Ord. § 6.14.203; Commerce City Code Ord. § 5-19006(a); Durango Code Ord. § 6-6(a); Lakewood Mun. Code § 14.26.060(A); Littleton City Code § 4-7-6(A); Lone Tree Mun. Code § 18-12-60(a); Loveland Mun. Code § 15.58.060(A); Wheat Ridge Code L. § 26-1306(A).

28. Aurora Code Ord. § 22-706(a); Centennial Mun. Code § 18-10-60(a); Colorado Springs Code Ord. § 6.14.203; Commerce City Code Ord. § 5-19006(a); Durango Code Ord. § 6-6(a); Littleton City Code § 4-7-6(A); Loveland Mun. Code § 15.58.060(A).

29. Colorado Springs Code Ord. § 6.14.203.

30. Aurora Code Ord. § 22-705(b)(1)(b), -705(e), and -706(d); Centennial Mun. Code § 18-10-50(b)(1)(b), -50(e), and -60(d); Colorado Springs Code Ord. § 6.14. 202(E) and 203(E); Commerce City Code Ord. § 5-19005(b)(1)(b), -19005(e), and -19006(d); Durango Code Ord. § 6-5(b)(1)(ii), -5(e), and -6(d); Lakewood Mun. Code § 14.26.050(B)(1)(b), .050(E), and .060(D); Littleton City Code § 4-7-5(B)(1)(b), -5(E), and -6(D); Lone Tree Mun. Code § 18-12-50(b)(1)(b), -50(e), and 60(c); Loveland Mun. Code § 15.58.050(B)(1)(b), .050(E), and .060(D); Wheat Ridge Code L. § 26-1305(B)(1)(b), -1305(B)(6), and -1306(D).

31. Aurora Code Ord. § 22-706(c).

32. Aurora Code Ord. § 22-706(e).

33. Centennial Mun. Code § 18-10-60(c) and (e); Commerce City Code Ord. § 5-19006(c) and (e); Durango Code Ord. § 6-6(c) and (e); Lakewood Mun. Code § 14.26.060(C) and (E); Littleton City Code § 4-7-6(C) and (E); Loveland Mun. Code § 15.58.060(C) and (E); Wheat Ridge Code L. § 26-1306(C) and (E).

34. Colorado Springs Code Ord. § 6.14.203(B); Lone Tree Mun. Code § 18-12-60(b).

35. *See* CRS § 13-20-803.5(3). *Cf. Lipira v. Thornton*, 585 P.2d 932, 933 (Colo.App. 1978) (finding city's home-rule charter requirement that notice of claim be given within a shorter time period than required by Colorado Governmental Immunity Act established a different notice of claim procedure, conflicting with the state statute; state statute controlled).

36. Aurora Code Ord. § 22-706(d) (one extension up to 60 additional days); Centennial Mun. Code § 18-10-60(d) (60 days); Colorado Springs

Code Ord. § 6.14.203(B) (45 days); Commerce City Code Ord. § 5-19006(d) (20 days); Durango Code Ord. § 6-6(d) (20 days); Lakewood Mun. Code § 14.26.060(D) (10 days); Littleton City Code § 4-7-6(D) (20 days); Lone Tree Mun. Code § 18-12-60(c) (10 days); Loveland Mun. Code § 15.58.060(D) (60 days); Wheat Ridge Code L. § 26-1306(D) (30 days).

37. Aurora Code Ord. § 22-706(e); Centennial Mun. Code § 18-10-60(e); Colorado Springs Code Ord. § 6.14.203(F); Commerce City Code Ord. § 5-19006(e); Durango Code Ord. § 6-6(e); Lakewood Mun. Code § 14.26.060(E); Littleton City Code § 4-7-6(E); Lone Tree Mun. Code § 18-12-60(d); Loveland Mun. Code § 15.58.060(E); Wheat Ridge Code L. § 26-1306(E).

38. Aurora Code Ord. § 22-706(e); Centennial Mun. Code § 18-10-60(e); Commerce City Code Ord. § 5-19006(e); Durango Code Ord. § 6-6(e); Lakewood Mun. Code § 14.26.060(E); Littleton City Code § 4-7-6(E); Lone Tree Mun. Code § 18-12-60(d); Loveland Mun. Code § 15.58.060(E); Wheat Ridge Code L. § 26-1306(E).

39. Colo. Springs Code Ord. § 6.14.203(F).

40. Wheat Ridge Code L. § 26-1306(E).

41. Aurora Code Ord. § 22-705(f); Centennial Mun. Code § 18-10-50(f); Commerce City Code Ord. § 5-19005(f); Durango Code Ord. § 6-5(e); Lakewood Mun. Code § 14.26.050(B)(7); Littleton City Code § 4-7-5(B)(7); Lone Tree Mun. Code § 18-12-50(f); Loveland Mun. Code § 15.58.050(f); Wheat Ridge Code L. § 26-1305(B)(7).

42. Colorado Springs Code Ord. § 6.14.203.

43. *See generally* Benson, *supra* note 10 at § 14.9.1.d: Practice Pointer: Resisting Statute of Limitations Defenses and Pleading and Proving Tolling After *Smith v. Executive Custom Home*s.

44. Aurora Code Ord. § 22-707.

45. Colorado Springs Code Ord. § 6.14.204.

46. *Id.*

47. Aurora Code Ord. § 22-708.

48. Centennial Mun. Code § 18-10-70 and -80; Colorado Springs Code Ord. § 6.14.204 and .205; Commerce City Code Ord. § 5-19007 and -19008; Durango Code Ord. § 6-7 and -8; Lakewood Mun. Code § 14.26.070 and .080; Littleton City Code § 4-7-7 and -8; Lone Tree Mun. Code § 18-12-70 and 80; Loveland Mun. Code § 15.58.070 and .080; Wheat Ridge Code L. § 26-1307 and -1308.

49. Lakewood Ordinance No. O-2012-21 (Oct. 13, 2014) at § 14.26.080.

50. Cities might arguably reach beyond their home-rule authority if they attempt to prevent Colorado's common law remedies from applying to claims arising from defective repairs.

51. Aurora Code Ord. § 22-711; Centennial Mun. Code § 18-10-110 (a); Commerce City Code Ord. § 5-19010(a); Durango Code Ord. § 6-9(a); Lakewood Mun. Code § 14.26.100; Littleton City Code § 4-7-10; Lone Tree Mun. Code § 18-12-100; Loveland Mun. Code § 15.58.110; Westminster Ord. No. 3867, §11-15-4; Wheat Ridge Code L. § 26-1310. Aurora, Centennial, Commerce City, Durango, Lakewood, Lone Tree, Loveland, and Wheat Ridge require that the notice must be signed by someone not employed by or affiliated with a law firm representing the HOA as to the claim, which unaffiliated person might include the HOA's corporate counsel. Aurora Code Ord. § 22-711(2); Centennial Mun. Code § 18-10-110(a)(2); Commerce City Code Ord. § 5-19010(a)(1); Durango Code Ord. § 6-9(a)(2); Lakewood Mun. Code § 14.26.100(B); Littleton City Code § 4-7-10(B); Lone Tree Mun. Code § 18-12-100(2); Loveland Mun. Code § 15.58.110(2); Wheat Ridge Code L. § 26-1310(B).

52. Denver Code Ord. § 10-203(b); Fort Collins City Code Art. § 5-353(b); Parker Mun. Code § 11.20.120(b); Westminster Ord. No. 3867, § 11-15-4(B).

53. Aurora Code Ord. § 22-711(3); Centennial Mun. Code § 18-10-110(a)(3); Colorado Springs Code Ord. § 6.14.104(B); Commerce City Code Ord. § 5-19010(a)(2) through (a)(9); Durango Code Ord. § 6-9(2); Lakewood Mun. Code § 14.26.100(C); Littleton City Code § 4-7-10(C); Lone Tree Mun. Code § 18-12-100(3); Loveland Mun. Code § 15.58.110(3); Wheat Ridge Code L. § 26-1310(C).

54. Colorado Springs Code Ord. § 6.14.104.

55. Colorado Springs Code Ord. § 6.14.104(B)(3) to (B)(5), (B)(8).

56. HOAs usually face minimal litigation cost exposure because they will recover their costs if they prevail; conversely, if the HOA suffers an adverse result, costs are often forgiven in exchange for the HOA's waiver of its appellate rights.

57. The effect of the absence of a monetary cap cannot be underestimated; an HOA may find it uneconomical to sue contractors for shoddy workmanship for which the HOA paid thousands of dollars because of the substantial cost of satisfying a CD ordinance disclosure and consent requirement. HOA counsel may wish to start adding "disclosure and consent requirement" expense recapture provisions to the HOA's vendor contracts.

58. *See* CRS § 38-33.3-303.5.

59. *See* CRS §§ 38-33.3-308(3) through (4) (executive board and its committees may hold executive or closed door sessions, and matters discussed at such sessions may include "[c]onsultation with legal counsel concerning disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;" and "[r]eview of or discussion relating to any written or oral communication from legal counsel."

60. Colorado Springs Code Ord. § 6.14.104(C); Denver Code Ord. § 10-203(d); Fort Collins City Code Art. § 5-353(d); Parker Mun. Code § 11.20.120(d); Westminster Ord. No. 3867, §11-15-3(D) (2017).

61. Denver Code Ord. § 10-203(a); Fort Collins City Code Art. § 5-353(a); Parker Mun. Code § 11.20.120(a).

62. Fort Collins City Code Art. § 5-353(a)(4); Parker Mun. Code § 11.20.120(a)(4).

63. Denver Code Ord. § 10-203(a)(4).

64. Denver Code Ord. § 10-203(a)(7); Fort Collins City Code Art. § 5-353(a)(7); Parker Mun. Code § 11.20.120(a)(7).

65. Wheat Ridge's CD ordinance, which defines "construction defect" as one which "materially lower[s] the value of the structure or pose[s] a safety risk to its occupants," Wheat Ridge Code L. § 26-1302, might not apply to a low-dollar amount dispute like this.

66. CRS § 38-33.3-303.5(1)(a).

The following chart details various provisions of the CD ordinances.

Item*	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs
Notice of Repair					
May be provided by development party within prescribed time frame.		Aurora Code Ord. § 22-706(a)		Centennial Mun. Code § 18-10-60(a)	Colo. Springs Code Ord. § 6.14.203
Must offer compensation for all expenses and/or damages incurred by specified person or entity within time frame set for repair (such as lodging expenses).		706(a)		18-10-60(a)	6.14.203
Must provide a detailed, step-by-step explanation of particular defect(s) being repaired and must identify reasonable starting and/or completion dates for repair work.		706(a)		18-10-60(a)	6.14.203
Must identify the repair method.					6.14.203
Must include contact information for any contractors the development party intends to employ for repairs.		706(a)		18-10-60(a)	6.14.203
Must state that the development party waives and will not assert any statute of limitations or repose defense to an action that the HOA or affected homeowners could bring within the time before actual completion, inspection, and acceptance of the repairs per the ordinance, and any warranty period provided thereunder.					6.14.203
Must state that the development party indemnifies and will hold harmless the HOA and affected homeowners from a lien or claim for materials or labor.					6.14.203
If the development party fails to send notice to repair or otherwise strictly comply with this chapter within specified time frames, subject to any applicable extension opportunity, the claimant shall be released from the chapter's requirements and may proceed with an action, unless subject to homeowner notice and consent requirements.		706(d)		18-10-60(d)	6.14.203(E)
The development party and HOA may modify by written mutual agreement the time requirements and procedures in this section.					6.14.203(G)
Right to Repair					
If the development party elects to repair the construction defect(s), it has the right to do so and specified persons (claimant, HOA, homeowners and/or affected homeowners) may not impair that right.		706(a)		18-10-60(a)	6.14.203
If the builder, with the claimant's written consent, elects to repair the construction defect, it has the right to do so and the claimant may not impair that right.					
The claimant, HOA, and/or affected homeowner(s) must cooperate with the development party to schedule repair work.		706(b)		18-10-60(b)	6.14.203(C)
The development party shall make a good faith effort to develop a mutually agreeable repair work schedule with claimant.					
Within the specified time frame, the claimant and/or HOA may deliver to the development party a written objection to proposed repairs based on a good faith belief that the repairs will not remedy the construction defect.		706(c)		18-10-60(c)	6.14.203(B)

Commerce City	Durango	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
Commerce City Code Ord. Ch. IX § 5-19006(a)	Durango Code Ord. Art XI, § 6-6(a)	Lakewood Mun. Code § 14.26.060(A)	Littleton City Code § 4-7-6(A)	Lone Tree Mun. Code § 18-12-60(a)	Loveland Mun. Code § 15.58.060(A)		Wheat Ridge Code L. § 26-1306(A)
19006(a)	6-6(a)	14.26.060(A)	4-7-6(A)	18-12-60(a)	15.58.060(A)		1306(A)
19006(a)	6-6(a)	14.26.060(A)	4-7-6(A)	18-12-60(a)	15.58.060(A)		1306(A)
19006(a)	6-6(a)	14.26.060(A)	4-7-6(A)	18-12-60(a)	15.58.060(A)		1306(A)
19006(d)	6-6(d)	14.26.060(D)	4-7-6(D)	18-12-60(c)	15.58.060(D)		1306(D)
19006(a)	6-6(a)	14.26.060(A)	4-7-6(A)				1306(A)
					15.58.060(A)		
19006(b)	6-6(b)	14.26.060(B)	4-7-6(B)		15.58.060(B)		1306(B)
					15.58.060(B)		
19006(c)	6-6(c)	14.26.060(C)	4-7-6(C)	18-12-60(b)	15.58.060(C)		1306(C)

Item*	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs
The development party may modify all or part of the proposal in accordance with the objection, and proceed with the modified scope of work, or may proceed with the scope of work described in the original proposal.		706(c)		18-10-60(c)	6.14.203(B)
The development party may modify the proposal, in whole or in part, in accordance with the objection, and proceed with the modified scope of work, or may proceed with the scope of work described in the original proposal, subject to claimant's written consent.					
Within 10 days of receipt of objection, the development party may elect to modify the proposal in accordance with the objection to claimant's satisfaction, or may propose alternatives. Claimant may deliver to the development party a written objection to proposed alternatives within 10 days, after which claimant may continue negotiations with the development party or proceed with filing an action, unless notice and consent are required. The development party may not make repairs while an objection is pending without claimant's consent.					
If the development party notifies the claimant within the specified number of days before the stated completion date that repair will not be completed by the completion date, the development party shall be entitled to one reasonable extension not to exceed a specified number of days.		706(d)		18-10-60(e)	6.14.203(B)
If claimant impairs the development party's right to repair, after providing written consent, the development party may enforce claimant's obligations under the chapter through the court system.					
If the HOA or affected homeowners impair the development party from making any repairs, the development party may seek relief available under Colorado law.					6.14.203(D)
If claimant directly or indirectly impairs the development party's right to repair, the city or the development party may enforce claimant's obligations in a district court action.		706(f)		18-10-60(f)	
If claimant directly or indirectly impairs the development party's right to repair, the city may refuse to issue building permits to the claimant until the claimant permits the development party to make repairs.		706(f)		18-10-60(f)	
If the development party fails to strictly comply with this chapter within specified time frames, or if the development party does not complete repairs within the time set forth in the notice, subject to extension allowed by ordinance, the claimant shall be released from the chapter's requirements and may proceed with the action, unless subject to notice and consent requirements.		706(d)		18-10-60(d)	6.14.203(E)
If the development party fails to strictly comply with this chapter within the specified time frames, or if the development party does not complete repairs within the time set forth in the notice, subject to extension allowed by ordinance, the claimant shall be released from the chapter's requirements and may proceed with the action.					

Commerce City	Durango	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
19006(c)	6-6(c)	14.26.060(C)	4-7-6(C)				1306(C)
					15.58.060(C)		
				18-12-60(b)			
19006(d)	6-6(d)	14.26.060(D)	4-7-6(D)	18-12-60(c)	15.58.060(D)		1306(D)
					15.58.060(F)		
19006(d)	6-6(d)		4-7-6(D)	18-12-60(c)	15.58.060(D)		
		14.26.060(D)					1306(D)

Item*	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs
The development party shall notify claimant when repairs are complete.		706(e)		18-10-60(e)	
Claimant shall have 10 days after the completion date to have the property inspected to verify that repairs are complete and have satisfactorily resolved construction defects.		706(e)		18-10-60(e)	
A claimant who believes in good faith that repairs do not resolve construction defects may proceed with specified action, which may include: homeowner notice and consent requirements; filing the action unless the chapter requires homeowner notice and consent; or filing an action under CRS § 13-20-803.5, or any other statute or court rule.		706(e)		18-10-60(e)	
Within 3 days after substantial completion of the repairs, the development party shall notify the HOA of substantial completion. The HOA shall have 45 days following substantial completion to verify that repairs are complete and satisfactorily resolve the construction defects. An HOA or affected homeowner who believes in good faith that the repairs do not resolve the construction defects may proceed with filing an action, subject to notice and consent requirements.					6.14.203(F)
The ordinance shall not preclude the claimant and development party from agreeing to a full or partial settlement and withdrawal of the construction defect claim.					
The development party and HOA may modify by written mutual agreement the time requirements and procedures in this section.					6.14.203(G)
Tolling of Statutes of Limitation and Repose					
If a notice is sent to the development party in accordance with the ordinance within the time for filing an action under the statutes of limitation or repose, the statutes are tolled until 60 days after the notice process' completion; if the development party elects to perform repairs pursuant to the ordinance, the statutes of limitation and repose are tolled until 60 days after repairs' completion.		705(f)		18-10-50(f)	
Warranty					
Repair work performed by the development party shall be warranted against material design or construction defects for two years, which warranty is in addition to any express warranties on the original work.		707		18-10-70	
Repair work performed by the development party shall be warranted against material design or construction defects for one year after repairs are substantially complete, which warranty is in addition to any express warranties on the original work.					6.14.204
If the development party fails to perform any warranty work with respect to any construction defect that has been previously repaired within a reasonable time after the development party's receipt of written notice of warranty claim, the HOA or affected homeowner may proceed with the filing of an action, subject to applicable homeowner notice and consent requirements.					6.14.204

Commerce City	Durango	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
19006(e)	6-6(e)	14.26.060(E)	4-7-6(E)	18-12-60(d)	15.58.060(E)		1306(E)
19006(e)	6-6(e)	14.26.060(E)	4-7-6(E)	18-12-60(d)	15.58.060(E)		1306(E)
19006(e)	6-6(e)	14.26.060(E)	4-7-6(E)	18-12-60(d)	15.58.060(E)		1306(E)
				18-12-60(e)			
19005(f)	6-5(e)	14.26.050 (B)(7)	4-7-5(B)(7)	18-12-50(f)	15.58.050(F)		1305(B)(7)
19007	6-7	14.26.070	4-7-7	18-12-70	15.58.070		1307

Item*	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs
Subsequently Discovered Defects					
Any construction defects discovered after repairs are complete are subject to the ordinance's requirements, if the development party did not have notice or an opportunity to repair the particular construction defect.		708		18-10-80	
If not covered in a settlement agreement or barred by the applicable statutes of limitation or repose, construction defects discovered after repairs have been completed shall be subject to the ordinance's requirements if the development party did not have notice or an opportunity to repair the particular defect.					6.14.205
Settlement by Payment of Sum Certain					
The development party may offer to settle the claim by payment of a sum certain to claimant.		709		18-10-90	6.14.203
The offer must be made within 30 days after initial inspection or testing is completed.					6.14.203
Claimant may make an offer to the development party to settle the claim by payment of a sum certain.		709		18-10-90	
The HOA, to the extent duly authorized, may make a written offer to the development party to settle the claim by payment of a sum certain at any time before the development party begins repair, with acceptance to be made in writing within 15 days after offer, or a designated longer period.					6.14.203(A)
An offer to settle by payment of a sum certain may also cover alleged construction defects discovered after the settlement's completion.		709		18-10-90	6.14.203(A)
Neither the development party nor claimant/HOA must make or accept settlement by payment of a sum certain.		709		18-10-90	6.14.203(A)
If an offer of settlement by payment of a sum certain is made, it shall be accepted by written notice of acceptance given to the party making the offer no later than 15 days after receipt of the offer or longer period, if stated in the offer as the time for acceptance. Colorado Springs permits acceptance of the offer by the HOA, to the extent duly authorized.		709		18-10-90	6.14.203(A)
If the offer is not accepted within 15 days or designated longer time, it shall be deemed rejected.		709		18-10-90	
If the offer is accepted, the money shall be paid in accordance with the offer and such payment shall be a full settlement and release of all claims relating to the alleged construction defect.		709		18-10-90	
The offer to settle must be made and accepted in full settlement and release of all claims relating to the alleged construction defects.					6.14.203(A)
Execution of the offer and acceptance shall be acknowledged before the notary if required by the offer's terms.		709		18-10-90	
Either party may record in the county clerk and recorder's public records a copy of the settlement offer and acceptance or notice of the construction defect and settlement, which shall provide notice that all claims relating to the construction defect have been settled.		709		18-10-90	

Commerce City	Durango	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
19008	6-8	14.26.080	4-7-8	18-12-80	15.58.080		1308
			4-7-6(F)		15.58.090		
			4-7-6(F)		15.58.090		
			4-7-6(F)		15.58.090		
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			4-7-6(F)		15.58.090		
			4-7-6(F)		15.58.090		
			4-7-6(F)		15.58.090		

Item*	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs
The offer may require execution of a settlement agreement in recordable form to be filed in the clerk and recorder's office so that constructive notice of a binding settlement may be provided to persons later acquiring an interest in the property.					6.14.203(A)
If the development party fails to make payment in accordance with the offer, the claimant may proceed with the action unless the ordinance requires homeowner notice and consent.		709		18-10-90	6.14.203(E)
The development party and HOA may modify by written mutual agreement the time requirements and procedures in this section.					6.14.203(G)
Plat Note Requiring Arbitration					
Limited to the final plat containing land intended for development of owner-occupied, multifamily dwelling units or associated common areas/elements, or common interest community improvements.	Arvada Land Dev. Code § 3.8.3.D.1				
Limited to condominium or multifamily buildings in a common interest community.		Aurora Resolution No. 2015-92 § 1			
Limited to multifamily minor development plats and excluding property owned by the town.					
Limited to an approved site development plan pertaining to development of a multifamily project, excluding property owned by the town.			Castle Rock Mun. Code § 17.24.050		
Applies to all claims that, regardless of the liability theory, are between: any owner of a portion of the property; any common interest community association regarding the property; the subdivider or developer, or anyone claiming through or under such persons; any party that designs or constructs a portion of the residential units, or common elements or improvements on the property; and/or any construction professional as defined by CDARA; and that relates to: the property; an improvement constructed on the property, or any common elements or improvements on the property; the common interest community created for the property or a portion of the property; or the community's governing documents.		§ 2			
Applies to all claims that, regardless of the liability theory, allege one or more construction defects and are between any owner; HOA; the subdivider, developer, or anyone claiming through or under such persons; any party that constructs or designs any portion of any unit; any construction professional as defined by CDARA; and pertain to the property; any unit, common area structure, common element, or other improvement constructed on the development; the common interest community; or the governing documents.	3.8.3.D.1		17.24.050		
Arbitration requirement in the plat note shall not preclude mediation or negotiation before arbitration.	3.8.3.D.1	§ 3	17.24.050		
The declaration may implement and expand on the plat note requirements.	3.8.3.D.1	§ 3	17.24.050		

Commerce City	Durango	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
			4-7-6(F)		15.58.090		
							Wheat Ridge Code L. § 26-420(A)
						Parker Mun. Code § 13.07.130(j)	
						13.07.130(j)	
							26-420(A)
						13.07.130(j)	26-420(A)
						13.07.130(j)	26-420(A)

Item*	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs
The declaration may specifically require that arbitration be administered through the American Arbitration Association (AAA), Judicial Arbiter Group (JAG), or similar service if qualified pursuant to Colorado's Uniform Arbitration Act (CUAA).		§ 3			
The declaration may exempt certain claims from binding arbitration, including claims to foreclose liens as part of the construction process; claims by an HOA to recover unpaid assessments; or claims by an HOA to obtain a temporary restraining order or injunction to prevent violation of covenants.		§ 3			
Prohibits amendment or change to the declaration that eliminates the requirement that claims described in the plat note be submitted to binding arbitration.		§ 3	17.24.050		
Defines binding arbitration as submission of any claim described in the plat note to an arbitration service provider specified in the governing documents, if qualified pursuant to the CUAA and if not, a provider so qualified.	3.8.3.D.1				
Defines binding arbitration as submission of claims described by ordinance to a single arbitrator who must be, at a minimum, a retired Colorado state district court judge or federal district court judge, or through the use of an organization that such retired judge may be a member of, such as JAG or its successors.			17.24.050		
Defines binding arbitration as submission of a claim described by the resolution administered through the AAA, JAG, or the arbitration service specified in the declaration if qualified pursuant to CUAA, with a single arbitrator using the then current AAA Consumer Arbitration Rules, if an individual homeowner is the claimant, or the AAA Construction Industry Arbitration Rules if the HOA is the claimant.		§ 4			
Requires that arbitration be conducted using rules of procedure the arbitrator adopts to promote the efficient and economical resolution of the claim.			17.24.050		
Requires that the arbitrator apply Colorado substantive law without regard to conflict of law principles.		§ 4			
Requires that arbitration costs and expenses be shared equally among the parties.	3.8.3.D.1		17.24.050		
Requires that each party bear fees and costs of its own attorneys, consultants, and experts, and share equally in the fees and expenses of the arbitrator and the arbitrator's organization.		§ 4			
Permits any judgment on the arbitrator's award to be entered in and enforced by a court of competent jurisdiction.		§ 4			
Provides that the plat note shall be recorded in a county's clerk and recorder's office, that future purchasers are deemed to accept and agree to terms and conditions of the note, and that it shall be deemed to be a covenant running with the property.		§ 5	17.24.050		

Commerce City	Durango	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
						13.07.130(j)	26-420(A)
						13.07.130(j)	26-420(A)
							26-420(A)
						13.07.130(j)	
						13.07.130(j)	
						13.07.130(j)	26-420(A)
						13.07.130(j)	

Item*	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs
Provides that all future purchasers of any interest in the development are deemed to have accepted and agreed to the plat note and shall be bound by it, that it shall be recorded with the county clerk and recorder's office, that it is a covenant running with the development, and that it binds all successors in interest and all others who acquire an interest in the development, together with any associated common interest community association.	3.8.3.D.1				
Requires that the purchase and sale agreement by the initial seller must disclose that the plat note requires arbitration, and if required, by using language "substantially" in the form described in the ordinance and in bold font.	3.8.3.D.2				
Requires that the plat note application include certification in an approved form that the applicable declaration requires binding arbitration of construction defect claims and prohibits amendment or deletion of the requirement without the applicant's consent.	3.8.3.D.3.b				
Mandates that the plat note require that after settlement or resolution of the arbitration of a controversy or claim concerning the property, the common interest community's manager shall promptly record notice of the fact of settlement/resolution and the development party's release from all such controversies or claims in the county's clerk and recorder's office.		§ 5			

*The ordinances adopted by Denver, Fort Collins, and Westminster do not contain any of the items described in this chart portion and are omitted.

Commerce City	Durango	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
							26-420(A)
							26-420(B)