# House Bill 17-1279

## New Prerequisites to Homeowner Association Construction Defect Lawsuits

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*This article summarizes the provisions of Colorado House Bill 17-1279, which amends Colorado law regarding homeowner association construction defect lawsuits.*

Consistent with the Colorado Common Interest Ownership Act's (CCIOA) charge to establish "a clear, comprehensive, and uniform framework for the creation and operation of common interest communities,"[1] the Colorado General Assembly recently adopted House Bill 17-1279 (HB 1279), which significantly amends CRS § 38-33.3-303.5[2] and requires homeowner association executive boards to satisfy new disclosure, meeting, and voting requirements before commencing a construction defect action (CD action).[3] Governor Hickenlooper signed HB 1279 into law on May 23, 2017.

### The Scope of HB 1279

HB 1279 applies to any "construction defect action" instituted by an association's executive board.[4] "'Construction defect action' . . . [m]eans any civil action or arbitration proceeding . . . brought against a construction professional to assert a claim . . . for damages or loss to, or the loss of use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to real property, regardless of the theory of liability."[5] "Construction defect action" also includes any related claim, including a claim for breach of fiduciary duty, that arises from an alleged construction defect or that seeks the same or similar damages.[6] While HB 1279 defines "construction defect action" slightly more broadly than Colorado's Construction Defect Action Reform Act (CDARA),[7] the new law adopts CDARA's definition of "construction professional."[8]

### Pre-CD Action Notices and Meeting

Before commencing a CD action, the executive board must "mail or deliver written notice" (the meeting and disclosure notice) of the anticipated CD action to each owner at the owner's address described in the association's

records and to the last-known address of each construction professional against whom a CD action is proposed.[9] Five business days before sending the meeting and disclosure notice, the executive board must also mail to each construction professional against whom a CD action is proposed a separate notice (the advisory notice) advising the construction professional of the new law's statutorily-required meeting (the CD action meeting).[10]

The advisory notice need not be sent to any construction professional identified after the advisory notice is mailed or to a party later joined in a CD action, if commencement of the CD action was previously approved by owners in accordance with the statute.[11] The advisory notice requirement may be intended to ensure that construction professionals have adequate time to prepare a presentation, a proposed repair, or a monetary settlement offer for the CD action meeting. Also, by exempting parties identified or joined after the notice is mailed, HB 1279 may recognize that associations may not have full information regarding various parties' roles and potential liabilities when they first consider bringing a CD action.

The meeting and disclosure notice must include certain "disclosures," described in more detail below, and must also call the CD action meeting to consider whether to bring the CD action.[12] The CD action meeting must be held between 10 and 15 days after the meeting and disclosure notice's mailing date and does not require a quorum.[13] Failure to hold the CD action meeting within the required time voids a later vote regarding the proposed CD action described in the meeting and disclosure notice.[14] The time for providing the meeting and disclosure notice, holding the CD action meeting, and voting is limited to 90 days.[15]

As a related matter, associations likely will begin CDARA's pre-suit, statutory notice of claim process (NCP) before sending either the meeting and disclosure notice or the advisory notice. During the NCP, an association typically works with potentially liable construction professionals to informally resolve issues. By exploring informal resolution through the NCP, associations may avoid incurring the time, effort, and expense of later asking unit owners to vote whether to pursue a CD action. If the NCP is in process or has already occurred, the advisory notice will provide construction professionals additional time to prepare for the CD action meeting, because CDARA's NCP will apprise them of the alleged construction defects.

As a practical matter, the new law's requirement that the CD action meeting occur within 10 to 15 days of the meeting and disclosure notice may not provide some unit owners with enough advance notice to arrange to attend. Therefore, associations and their counsel may seek to communicate with owners in advance about the community's construction defects, the history of efforts to resolve the issues (including any repair offers or refusals to offer adequate repairs), potential legal options, and any upcoming disclosure and voting periods, well before sending the statutorily required meeting and disclosure notice.

Because misconceptions may exist regarding unit owners' shared responsibility for common element defects—each condominium unit owner owns an undivided interest in the common elements[16] and a corresponding financial responsibility for any assessments levied to repair common element defects[17]—associations and their counsel may seek to explain these matters to owners before sending the meeting and disclosure notice to help them make an informed decision when casting their votes. Similarly, construction professionals may seek to communicate directly with unit owners about alleged defects or the options available to unit owners and the association to address those defects, before the association disseminates a meeting and disclosure notice or before the CD action meeting, so that owners have adequate time to consider these issues before the voting period begins immediately after the CD action meeting.

Information that must be provided in the meeting and disclosure notice is not protected from disclosure by the attorney–client and common interest privileges or by the work product doctrine because associations must send the meeting and disclosure notice to potentially liable, adverse parties. However, associations are not required to disclose any information in the meeting and disclosure notice that is protected by the attorney–client or other applicable privilege, nor may the meeting and disclosure notice serve as waiver of any applicable privilege or confidentiality.[18] Other communications between and among association counsel, association agents (such as property managers), the executive board, and/or unit owners that contain legal advice should remain subject to such privileges and confidentiality.[19] Communications between construction professionals and unit owners or the association generally are not protected from disclosure in a lawsuit between an association and construction professionals, but settlement offers and demands and related communications may be inadmissible at trial.[20]

### *Meeting and Disclosure Notice: Required Meeting*

As it relates to the CD action meeting, the meeting and disclosure notice must state the following:

1. The voting period to approve a CD action begins upon the conclusion of the CD action meeting, during which time the association will accept votes for or against proceeding with the CD action.[21]
2. The disclosure and voting period ends at the earlier of 90 days after the meeting and disclosure notice's mailing date, or when the association determines that the unit owners have either approved or disapproved the CD action.[22]
3. All construction professionals against whom a CD action is proposed will be invited to attend the CD action meeting and will have the opportunity to address the owners concerning the alleged construction defects, at which time the construction professionals or their designees may, but are not required to, offer to remedy any defect in accordance with CDARA's NCP.[23]

Although the conclusion of the CD action meeting begins the voting period, during which time votes may be *accepted*, HB 1279 does not prohibit associations from distributing information or ballots to owners before the CD action meeting, nor does it prohibit construction professionals and their counsel from communicating directly with unrepresented owners outside of the CD action meeting.

### *Meeting and Disclosure Notice: Required Disclosures*

The meeting and disclosure notice must include a description of the "nature of the construction defect action, which description identifies alleged defects with reasonable specificity, the relief sought, a good-faith estimate of the benefits and risks involved, and any other pertinent information."[24] Because the meeting and disclosure notice must be sent to construction professionals, general statements about commonly recognized benefits and the risks of litigation, as well as pertinent information unrelated to privileged legal advice, should satisfy these obligations without waiving applicable privileges or disclosure protections.[25] The bill does not expressly impose a remedy or sanction for failure to comply with its disclosure requirements.

The meeting and disclosure notice must also include the following 10 disclosures:

1. The alleged defects may result in increased maintenance or repair costs or an increase in assessments or special assessments to cover repair costs.[26]
2. The CD claim will expire if the association does not file the claim before applicable legal deadlines.[27]
3. Unit sellers may owe prospective buyers a duty to disclose known defects.[28]
4. The compensation arrangement, or intended compensation arrangement, between the executive board and its attorneys.[29]
5. The association may incur up to a specified amount for legal costs, in addition to attorney fees. The specified amount may not be exceeded without the executive board's written approval. The association may be responsible for paying these expenses if it does not prevail on its claim.[30]
6. The association may be responsible for paying its attorney fees if it does not prevail on its claims.[31]
7. A court or arbitrator may award costs and fees to the opposing party if the association does not prevail on its claims, and the association may be responsible for paying fees and costs if they are awarded.[32]
8. There is no guarantee that any damages awarded will cover the cost of repairing the construction defects and if the defects are not repaired, additional damage or a reduction in the common elements' useful life may occur.[33]
9. The market value of the units may be adversely affected until the construction defects are repaired or until the CD action is resolved.[34]
10. Unit owners may have difficulty refinancing, and prospective buyers may have difficulty obtaining financing, until the construction defects are repaired or until the CD action is resolved. Certain federal underwriting standards or regulations limit or prohibit financing where construction defects are claimed, and some lenders will not provide financing for projects where defects are claimed.[35]

> "Whether the new law preempts municipal ordinances that impose their own disclosure and unit owner approval requirements depends, in part, on whether HB 1279 governs matters of statewide concern."

The First Amendment may guarantee an association's right to include additional language in the meeting and disclosure notice explaining the meaning and import of the required disclosures to its unit-owner members.[36] So long as the association does not disseminate any material misrepresentations, the likelihood of construction professionals obtaining court intervention or relief due to any such supplementary statements may be quite low. For example, required disclosure (6), stating that "[t]he association may be responsible for paying its attorneys' fees if it does not prevail on its claims," would be inaccurate if the association retained counsel on a contingency fee basis, and the association's explanation of this fact may be appropriate. Construction professionals may similarly elect to draft and distribute information they deem pertinent to the issues involved so long as it is not materially misleading.

### Unit Owner Approval

HB 1279 provides, "[n]otwithstanding any provision of law or any requirement in the governing documents, the executive board may initiate the construction defect action only if authorized within the voting period by owners of units to which a majority of votes in the association are allocated."[37] However, unit owner approval to commence a CD action is not required in two circumstances: (1) where the alleged defect relates to a facility intended and used for nonresidential purposes, if the cost to repair does not exceed $50,000; and (2) where the "association is the contracting party for the performance of labor or purchase of services or materials."[38] Based on the legislative history, these exceptions appear to be directed at claims involving relatively minor defects, such as renovations or repairs, contracted for by a homeowner association.[39]

HB 1279 does not define the term "nonresidential purposes." Common amenities and areas, such as clubhouses and swimming pools, are appurtenant to residential structures and used by residents, and therefore may or may not be considered intended for residential purposes under the statute.[40] Alternatively, facilities intended for nonresidential purposes may refer to areas dedicated strictly to commercial use, such as the commercial portions of a mixed-use

common interest development. Because the kinds of concerns that gave rise to HB 1279 may or may not apply to construction defect claims by commercial unit owners, courts may need to examine HB 1279's application to construction defect claims affecting owners of units located within certain types of commercial condominiums, such as retail space and office buildings.

Each owner may submit a vote only once and may vote in any written format that confirms the owner's vote to approve or reject the proposed action.[41] For purposes of calculating the vote approval percentage, the following votes are excluded:

- votes allocated to units owned by a "development party" or a development party's "affiliate"[42] ("development party" is "a contractor, subcontractor, developer, or builder responsible for any part of the design, construction, or repair of any portion of the common interest community"[43] and "affiliate" includes "an entity controlled or owned, in whole or in part, by any person that controls or owns a development party or by the spouse of a development party"[44]);
- votes allocated to banking institution-owned units, unless the association receives the vote;[45]
- votes allocated to units of a product type that does not contain alleged defects, in a community whose declaration does not impose shared common expense liabilities between the product types;[46] and
- votes "allocated to units owned by owners who are deemed nonresponsive."[47] The statute does not define the term "nonresponsive."

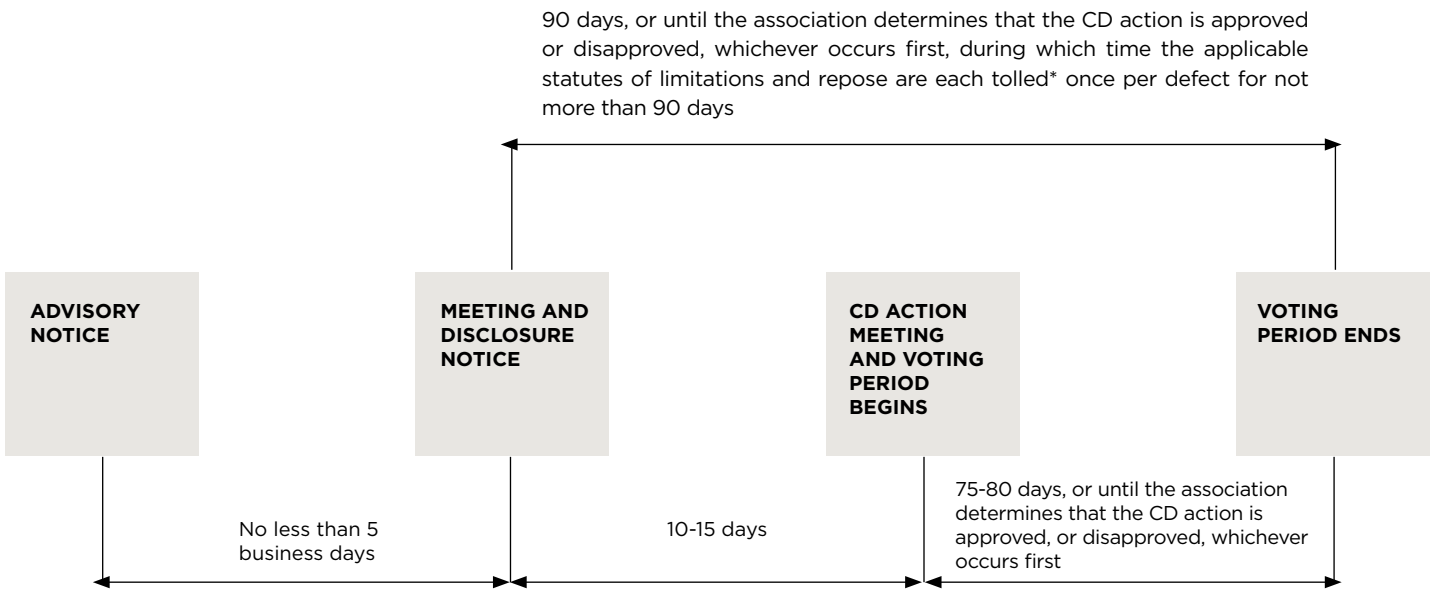
Thus, the association need only obtain majority approval from those qualified unit owners who vote whether to authorize the CD action rather than from a majority of votes allocated within the association.[48] This standard is less burdensome than the standard imposed by most local ordinances and by many communities' governing documents.[49]

Construction professionals may challenge in court the designation of a unit owner as "nonresponsive."[50] In response to such a challenge, the court must consider whether the executive board has made diligent efforts to contact the unit owner regarding the vote, including whether the owner appears to be residing at the unit, and whether the association used other contact information, such as the owner's email or phone number.[51] One way associations might seek to satisfy this diligence test is to have their unit owners sign and date an acknowledgment that they received the meeting and disclosure notice. Construction professionals may argue that an association's efforts to contact an owner must include the enumerated criteria to support a "nonresponsive" designation. Such challenges may be moot if, even assuming all nonresponsive owners oppose the CD action, there would not be enough negative votes to defeat authorization.

### Timing and Tolling

HB 1279 tolls all statutes of limitation and repose that apply to defects that the meeting and disclosure notice describes with reasonable specificity from the mailing date of the meeting and disclosure notice[52] until the 90-day voting and disclosure period ends, or until the association determines that the proposed CD action has been approved or disapproved, whichever occurs first.[53] The statute tolls a claim based on a particular defect only once and does not extend the limitations and repose periods applicable to a particular defect for more than 90 days.[54]

However, if a defect not included in an earlier meeting and disclosure notice is subject to a later vote, the statute tolls those new defect claims unless the applicable statutes of limitation and repose bar such claims.[55] While HB 1279




*Other statutory and common law tolling doctrines may overlap with tolling under HB 1279

provides that a later vote on claims based on particular defects does not result in additional tolling after the initial vote on those claims, the law does not prohibit an association from conducting multiple votes on a proposed CD action if an earlier vote fails. Nothing in HB 1279 alters CDARA's tolling provisions.[56]

### Amending and Supplementing a Claim

An association may amend or supplement its description of its proposed CD action after it sends the meeting and disclosure notice.[57] However, the association must provide owners with notice of the amended or supplemental CD claims and maintain a record of such notice.[58] While an amended or supplemental claim does not extend the voting period, the association is not required to obtain unit owner approval of any amendments or supplements made after it sends the meeting and disclosure notice.[59]

These provisions recognize that an association may discover new defects after sending a meeting and disclosure notice, and may reflect the legislature's desire to ensure that owners generally approve the executive board's decision to pursue a CD action, even though all details of the proposed CD action may be unknown at the time the meeting and disclosure notice is sent and the vote is conducted.

### Record-Keeping Requirements

Associations must maintain a verified owner mailing list that identifies owner addresses and provide a copy of this list to construction professionals at the CD action meeting.[60] The list is considered "verified" if an association officer or agent certifies a specimen copy of the list.[61] If the association commences a CD action, the association must file under seal its verified list and records of owner votes received during the voting period.[62] The association must maintain a record of votes through the duration of the CD action, including any appeals.[63]

### Severability and Applicability

If any of HB 1279's provisions are deemed invalid, the entire "section" shall be invalid.[64] HB 1279 does not clarify whether "section" refers to the entire bill, CRS § 38-33.3-303.5 in its entirety, or the subsection of CRS § 38-33.3-305 that is declared invalid. Because the severability provision may reflect recognition of the carefully negotiated, grand compromise between varied and competing interest groups that this law represents, and the interdependent nature of the law's provisions, some may argue that "section" refers to the bill in its entirety.[65] Others may counter that had that result been intended, the legislature could have simply used the words "this law," or similar words.

> "HB 1279 is intended to create a comprehensive pre-CD claim disclosure, meeting, and CD action approval process that addresses construction industry concerns without unreasonably limiting homeowners' rights."

HB 1279 applies to CD actions filed on or after the act's effective date,[66] May 23, 2017.

### Matters of Statewide Concern and Preemption

Whether the new law preempts municipal ordinances that impose their own disclosure and unit owner approval requirements[67] depends, in part, on whether HB 1279 governs matters of statewide concern. While the new law does not expressly deem matters relating to disclosure and unit owner approval to be matters of statewide concern, based on the new law's legislative history, associations may argue that HB 1279 preempts or voids some or all disclosure and approval requirements currently imposed by local municipal ordinances and association governing documents.[68]

Construction professionals may counter that home-rule cities may properly address the perceived need to increase construction of multifamily housing by adopting ordinances governing multifamily CD suit disclosure and voting requirements and that such laws either preempt state law or, if not, must be read harmoniously with state law and given effect whenever possible.[69] *Colorado Lawyer*'s three-part series, "Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law," contains a comprehensive discussion of the various Colorado home-rule city ordinances and the preemption and constitutional issues that such ordinances may raise.[70] Whether the bill preempts some, none, or all of the municipal ordinances that apply to the same or similar matters remains an open question.

### Conclusion

HB 1279 is intended to create a comprehensive pre-CD claim disclosure, meeting, and CD action approval process that addresses construction industry concerns without unreasonably limiting homeowners' rights. Whether this new law achieves this end remains to be seen. CL



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## NOTES

1. CRS § 38-33.3-102(1)(a).

2. Colorado's Construction Defect Action Reform Act of 2001 added CRS § 38-33.3-303.5 to CCIOA. *See* HB 01-1166, § 3.

3. *See* HB 17-1279.

4. CRS § 38-33.3-303.5(1)(a).

5. CRS § 38-33.3-303.5(1)(b)(I)(A).

6. CRS § 38-33.3-303.5(1)(b)(I)(B).

7. *Compare* CRS § 38-33.3-303.5(1)(b)(I) *with* CRS § 13-20-802.5(1).

8. CRS § 38-33.3-303.5(1)(b)(II).

9. CRS § 38-33.3-303.5(1)(c)(I). Although HB 1279 authorizes delivery of the meeting and disclosure notice by means other than mail, many of the statute's new requirements reference the meeting and disclosure notice's "mailing date." *See* CRS § 38-33.3-303.5(1)(c)(II) (CD action meeting must be held 10 to 15 days after meeting and disclosure notice's mailing date); CRS § 38-33.3-303.5(1)(c)(II)(A) (disclosure and voting period end no later than 90 days after the meeting and disclosure notice's mailing date); CRS § 38-33.3-303.5(1)(d)(II)(B) (tolling begins on meeting and disclosure notice's mailing date); and CRS § 38-33.3-303.5(1)(e) (advisory notice required five business days before meeting and disclosure notice's mailing date). *But see* CRS § 38-33.3-303.5(1)(c)(II) (time for "providing" meeting and disclosure notice, conducting the meeting, and the voting period shall not exceed 90 days). Ultimately, associations may elect to mail the meeting and disclosure notice to owners to avoid confusion regarding the deadlines HB 1279 imposes. However, nothing in the new law prevents them from also providing the meeting and disclosure notice in another manner, such as by hand-delivery or electronic mail, and using more than one delivery method may serve to rebut any claim that the notice delivery effort was not adequate.

10. CRS § 38-33.3-303.5(1)(e).

11. CRS § 38-33.3-303.5(1)(c)(I)(A) and (B).

12. *See* CRS § 38-33.3-303.5(1)(c)(II) and (III).

13. CRS § 38-33.3-303.5(1)(c)(II).

14. *Id.*

15. *Id.*

16. CRS § 38-33.3-103(9).

17. CRS § 38-33.3-315(2).

18. HB 1279 did not alter CRS § 28-33.3-303.5(3), which provides:

(3) Nothing in this section shall be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney–client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the executive board to contract for legal services, or limit or impair the ability to enforce such a contract for legal services.

19. *Cf. Seahaus La Jolla Owners Ass'n v. Superior Ct.*, 169 Cal. Rptr. 3d 390, 406 (Cal.Ct.App. 2014) (ordering trial court to vacate order denying homeowners association's assertion of attorney–client privilege during discovery in construction defect suit; holding common interest privilege between homeowners association and its unit owners not waived even if forensic experts privy to discussions). *See also Highland Ct. Residence Homeowners Ass'n v. M&R Dev., LLP*, No. 2007CV6386 (Denver County Dist. Ct. July 11, 2008) (attorney–client privilege protects communications between homeowners association and its unit owners regarding legal advice the association obtained in pursuit of construction defect claims); *Black v. Sw. Water Conservation Dist.*, 74 P.3d 462 (Colo.App. 2003) (communications shared with third persons who have a common interest with respect to subject of communications do not waive confidentiality surrounding attorney–client relationship), *accord Metro Wastewater Reclamation Dist. v. Cont'l Cas. Co.*, 142 F.R.D. 471 (D.Colo. 1992) ("not every disclosure of attorney–client communications constitutes an invasion of the privilege. Communications shared with third persons who have a common legal interest with respect to the subject matter thereof will be deemed neither a breach nor a waiver of the confidentiality surrounding the attorney–client relationship.").

20. *See* CRE 408 (settlement offers generally inadmissible, with exceptions); CRS § 13-20-806(6) ("In any case in which the court determines that the issue of a violation of the [CCPA] will be submitted to a jury, *the court shall not disclose nor allow disclosure to the jury of an offer of settlement or offer to remedy made under section 13-20-803.5 that was not accepted by the claimant*." (emphasis added)).

21. CRS § 38-33.3-303.5(1)(c)(II)(A).

22. *Id.*

23. CRS § 38-33.3-303.5(1)(c)(II)(B) and (C). Because many local home-rule city CD ordinances provide for a mandatory warranty accompanying repairs voluntarily offered by construction professionals, it is an open question whether such warranties apply to repairs made under this section of HB 1279 and CDARA's NCP; however, if such ordinances are preempted by state law, this question may be moot. For a discussion of these local CD ordinance repair warranties, *see* Sandgrund et al., "Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law—Part 2," 46 *Colorado Lawyer* 35 (Mar. 2017).

24. CRS § 38-33.3-303.5(1)(c)(III).

25. *See supra* notes 18 and 19.

26. CRS § 38-33.3-303.5(1)(c)(III).

27. *Id.*

28. *Id*.

29. *Id*.

30. *Id*. Where the association's CD counsel assumes representation on a contingency fee basis and advances costs under circumstances where those costs will only be reimbursed from any recovery, there would be little or no risk that the association would be "responsible for paying these expenses if it does not prevail on its claim." In such circumstances, it may be proper to make this fact clear in the notice to avoid misleading unit owners.

31. CRS § 38-33.3-303.5(1)(c)(III).

32. *Id*.

33. *Id*.

34. *Id*.

35. *Id*.

36. *See generally* U.S. Const. Amend. 1; Colo. Const. art. II, § 10.

37. CRS § 38-33.3-303.5(1)(d)(I)(A).

38. *Id*.

39. *See* House Committee Hearing Transcript (Apr. 19, 2017) at 46/23 through 47/21 (bill sponsors Garnett and Wist testifying that the exceptions are intended to exempt from the new requirements small claims and claims in which the association is the contracting party), and House hearing audio recording, http://coloradoga.granicus.com/MediaPlayer.php?view_id=23&clip_id=11060.

40. *Cf.* CRS § 38-33.3-103(26) ("Residential use" means use for dwelling or recreational purposes but does not include spaces or units primarily used for commercial income from, or service to, the public.).

41. CRS § 38-33.3-303.5(1)(d)(I)(B).

42. CRS § 38-33.3-303.5(1)(d)(III)(A).

43. *Id*.

44. *Id.* It appears that the "spouse" of a development party would apply only in situations where the development party is a natural person, which is only rarely the case. Because the term "affiliate" is not limited to the examples HB 1279 provides, it is theoretically possible that others, such as friends and relatives of natural person development parties, might be swept into this category.

45. CRS § 38-33.3-303.5(1)(d)(III)(B).

46. CRS § 38-33.3-303.5(1)(d)(III)(C). "Product type" is not defined.

47. CRS § 38-33.3-303.5(1)(d)(III)(D).

48. *Compare* CRS § 38-33.3-303.5(1)(d)(I)(A) (executive board may initiate a CD action "only if authorized within the voting period by owners of units to which a majority of votes in the association are allocated") *with* CRS § 38-33.3-303.5(1)(d)(III) ("For purposes of calculating the required majority vote under this subsection(1)(d) only, the following votes are excluded: . . . (D) Any votes allocated to units owned by owners who are deemed nonresponsive."). Because the only "response" to the meeting and disclosure notice necessary to authorize a CD action is the unit owners' vote, it makes sense to conclude that a "nonresponsive" unit owner refers to a qualified unit owner who does not vote. *See* Mill et al., "Construction Advisory: Passage, Defeat, and Uncertainty: The Colorado General Assembly Tackles Construction Defect Reform in the 2017 Session" (May 1, 2017), https://shermanhoward.com/publications/construction-advisory-passage-defeat-uncertainty-colorado-general-assembly-tackles-construction-defect-reform-2017-session ("construction industry representatives objected to the exclusion of non-responsive voters because that could result in a construction defect claim being approved by less than a majority of unit owners . . . .").

49. Some construction professional counsel have criticized this new 50% statutory ceiling: "Pursuant to this bill, an executive board may only institute a construction defect action only if authorized by a simple majority of the unit owners . . . . I fail to see how those in the Colorado Legislature actually believe that reducing the owner consent level from the 67% a declaration can currently require to a simple majority . . . will do anything to cool the litigious environment when it comes to condominiums and townhomes." McClain, "Colorado House Bill 17-1279—A Misguided Attempt at Construction Defect Reform" (Mar. 27, 2017), www.coloradoconstructionlitigation.com/2017/03/colorado-house-bill-17-1279-misguided.html.

50. *See* CRS § 38-33.3-303.5(1)(d)(III)(D).

51. *Id*.

52. While the tolling runs from the meeting and disclosure notice mailing date, CRS § 38-33.3-303.5(1)(d)(II)(B), the association may deliver the meeting and disclosure notice to the unit owners through means other than mail. *See* CRS § 38-33.3-303.5(1)(c) ("shall mail or deliver written notice").

53. CRS § 38-33.3-303.5(1)(d)(II)(B).

54. CRS § 38-33.3-303.5(1)(d)(II)(C).

55. *Id*.

56. CRS § 38-33.3-303.5(1)(d)(II)(B).

57. CRS § 38-33.3-303.5(1)(c)(V).

58. *Id*.

59. *Id*.

60. CRS § 38-33.3-303.5(1)(c)(IV).

61. *Id*.

62. *Id*.

63. CRS § 38-33.3-303.5(1)(d)(I)(B).

64. CRS § 38-33.3-303.5(4).

65. *See* Senate Committee Hearing Transcript (May 1, 2017) at 3/7 through 9 (Sponsor Guzman testifying that "this compromise that is represented in this bill has been carefully crafted after many hours and frankly many years of negotiations."); House Committee Hearing Transcript (Apr. 19, 2017) at 57/15 through 18 (Representative Melton acknowledging the bill is a "good compromise" that bridges the gap between helping consumers and "opening up the industry to get things moving . . . ."); House hearing audio recording, http://coloradoga.granicus.com/MediaPlayer.php?view_id=23&clip_id=11060; Senate hearing audio recording, http://coloradoga.granicus.com/MediaPlayer.php?view_id=41&clip_id=11178.

66. HB 17-1279, § 3.

67. *See generally* Sandgrund et al., "Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law—Parts 1, 2, and 3," 46 *Colorado Lawyer* (Feb., Mar., and Apr. 2017).

68. Associations may urge that statements by the bipartisan sponsors of HB 1279 support the conclusion that this law describes a matter of statewide concern and that it is intended to preempt any conflicting municipal ordinance voting and disclosure provisions. Bill cosponsor and Democratic Senator Lucia Guzman testified during a legislative hearing, "this is a statewide concern." Senate Committee Hearing Transcript (May 1, 2017) at 33/24. Similarly, bill co-sponsor and Republican House Representative Lori Saine testified during a legislative hearing that the bill "complements the intent" of existing ordinances and "provides a certainty needed on the level of statewide concern . . . ." House Committee Hearing Transcript (Apr. 19, 2017) at 55/3 through 5. Representative Saine also testified that "17 cities . . . have passed ordinances to deal with these issues and they are seeking leadership from this body to provide some consistency to the law with respect to informed consent. That's the reason for the legislation . . . ." House Committee Hearing Transcript (Apr. 19, 2017) at 55/21 through 56/1.

*See also* Senate Committee Hearing Transcript (May 1, 2017) at 19/4-7 and 17-20 (attorney Leff testifying on behalf of Community Association Institute that HB 1279 "makes owner notice, disclosure and consent requirements a matter of statewide concern . . . [and] limits the vote requirements that developers can impose on associations that might seek to bring construction defect claims."); *id.* at 26/16 through 20 (attorney Perczak testifying that the bill provides "uniformity" by imposing a maximum 51% vote overriding the patchwork created by local ordinances); House Committee Hearing Transcript (Apr. 19, 2017) (attorney Leff testifying that the "requirement of a majority vote, which is 50% plus one is a new requirement for associations and is higher than many voting requirements . . . but this new requirement prevents developers from establishing unreasonably high hurdles for owner consent to remedy defects."); *id*. at 14/8 through 16 (attorney Leff testifying that the bill "eliminates the patchwork of rights that have been created by various municipal ordinances that address the same types of issues . . . and instead of having different rights in different zip codes, this will create some statewide uniformity for construction defect claims."); House hearing audio recording, http://coloradoga.granicus.com/MediaPlayer.php?view_id=23&clip_id=11060; Senate hearing audio recording, http://coloradoga.granicus.com/MediaPlayer.php?view_id=41&clip_id=11178.

69. *See* House Committee Hearing Transcript (Apr. 19, 2017) at 18/20 through 23 (Lakewood Mayor Paul testifying that "[w]e do believe in the integrity of our ordinances. Now this informed consent piece is something that we may need to examine and see where that, where we come in line with what we require in the City."); House hearing audio recording, http://coloradoga.granicus.com/MediaPlayer.php?view_id=23&clip_id=1106.

70. *See* Sandgrund et al., *supra* note 67.