

Construction Defect Municipal Ordinances: The Balkanization of Tort and Contract Law (Part 1)

by Ronald M. Sandgrund, Jennifer A. Seidman, Leslie A. Tuft, and Nelson Boyle

This is Part 1 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 application and construction of the ordinances are noted.

At least 15 Colorado home-rule cities have adopted ordinances governing construction defect claims (CD ordinances), with more cities expected to pass similar ordinances in the future. This article does not examine in detail the underlying reasons for these CD ordinances.¹

Generally, some cities have adopted CD ordinances solely to prevent common interest community (CIC) homeowner associations (HOAs) from amending their declarations of covenants, conditions, and restrictions (declarations) to delete arbitration requirements. Most cities, however, have adopted broad pre-suit claim notice procedures and unit owner disclosure and consent-to-sue provisions. A few have adopted ordinances that arguably change substantive construction defect tort and contract law. Four general categories of CD ordinances have been adopted:

- (1) Notice-repair ordinances—comprehensive ordinances that include pre-suit notice to construction professionals, with rights of entry, inspection, and repair;²
- (2) Disclosure-voting ordinances—ordinances that mandate specified pre-suit disclosures to 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;³ and

- (4) Plat note ordinances—ordinances that allow construction professionals to record plat notes generally mandating construction defect arbitration (CD arbitration).⁴

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

Part 1 of this article examines the CD ordinances’ main provisions, including defined terms, arbitration requirements, and claim notice and right of repair processes. Potential procedural 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.

Threshold Considerations

The cities that currently have CD ordinances include Arvada, Aurora, Castle Rock, Centennial, Colorado Springs, Commerce City, Denver, Durango, Fort Collins, Lakewood, Littleton, Lone Tree, Loveland, Parker, and Wheat Ridge. (A proposed ordinance may be adopted by Westminster by or before this article’s publication.) Thus property owners, construction professionals (often referred to as “builders” or “development parties” in the CD ordi-

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nances), 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),⁵ Homeowner Protection Act (HPA),⁶ Common Interest Ownership Act (CIOA),⁷ Uniform Arbitration Act (UAA),⁸ and the common law. Claimants can be expected to argue that the procedural, substantive, and evidentiary provisions of the CD ordinances expressly or impliedly conflict with CDARA, HPA, CIOA, and UAA—making them a challenge to harmonize and creating potentially conflicting obligations.⁹

While these CD ordinances are generally described below, a complete analysis and comparison of each is not included. Instead, several common, key CD ordinance features are summarized, and some significant differences are compared. The CD ordinance comparison charts following each of this article’s three parts provide additional details.

Practice Pointers: Consider the following threshold questions, which will be addressed in greater detail in Part 3:

- whether CD ordinances exceed the cities’ home rule authority under the Colorado Constitution. Can Colorado home-rule cities pass their own tort, contract, or other laws to encourage condominium and multifamily dwelling development? Colorado courts will likely address this state-versus-local control question by asking, “Who’s the boss: state legislators or local council members?”;
- whether state statutes preempt some or all CD ordinance provisions;
- whether courts can harmonize a particular CD ordinance with state statutes; and
- whether some CD ordinance provisions violate the Colorado and U.S. Constitutions. For example, several CD ordinances purport to grant construction professionals (who are authorized to repair their own defective construction as they deem appropriate) the right to enter dwellings over homeowners’ objections, and to perform destructive testing and invasive investigations. Do these actions implicate due process and property rights concerns? CDARA avoids such issues by affording construction professionals a statutory “*opportunity* to offer repair” rather than a “*right* of repair.” Claimants could also argue that CD ordinances raise equal protection concerns because they affect residential property owners living within statutory CICs but exclude other residential property owners and all commercial property owners.
- Can cities use local CD ordinances to control access to state courts of general jurisdiction and the evidence state district court judges can admit at trial? Viewed another way, if cities can adopt local CD ordinances concerning the application of tort and contract law and limit access to state courts, does this create a patchwork of potentially conflicting laws?

The CD Ordinance Framework

Most CD ordinances contain provisions defining terms regularly arising in CD litigation (such as “construction defect”) and requiring arbitration or other alternative dispute resolution (ADR), either through recording a plat note or by restricting declaration amendments. CD ordinances contain varying provisions regarding:

- their applicability;
- claimant construction defect notices;

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	Wheat Ridge
Fort Collins	
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	Fort Collins
Denver	Parker
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

- the construction professional’s response to such notices (including inspection and testing, and notice of intent to repair);
- limitations on claimant interference with construction professionals’ inspection and repair rights;
- claimant objections to construction professionals’ repair notices;
- tolling of statutes of limitations and repose;
- repair warranty provisions;
- settlement of claims by payment of a sum certain;
- pre-suit disclosure to CIC homeowners regarding CD claims, including estimated CD lawsuit costs, funding, duration, and ramifications;
- CIC homeowner voting procedures to approve CD lawsuits; and
- evidentiary provisions regarding the admissibility of building code violations and evidence spoliation during testing, among other things.

Definitions

Nearly all CD ordinances describe their scope by defining the terms builder, claimant, common interest community, construction defect, construction defect claim, declarant, development party, homeowner, homeowner association, and respondent. Many definitions roughly parallel those contained in CIOA and CDARA, but several differences could lead to varying interpretations. For ease of reference, this article refers to anyone who may be potentially responsible for a CD claim as a “construction professional,” a defined term under CDARA, but one that does not appear in many CD ordinances. Some CD ordinances extend their protections to a broader class of persons than this CDARA-defined term.

Practice Pointer: How will CD ordinances be applied if they arguably impede claimants from proceeding under CDARA, particularly if the claimant must satisfy stricter, or conflicting, city-imposed pre-suit requirements?

Construction Defects and Development Parties

Denver, Fort Collins, and Parker define a “construction defect claim” as a

civil action or an arbitration proceeding for damages, indemnity or contribution brought against a development party to assert a claim, counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of the use of, real or personal property or personal injury caused by a defect in the design or construction of an improvement to the real property that is part of a common interest community.¹⁰

Denver, Fort Collins, and Parker couple this definition with a broad definition of “development party” to include within the universe of construction professionals their “affiliates, officers, directors, partners, shareholders, members, managers, employees or servants” who were involved in the “design, supervision, inspection, construction, or observation of the construction of any improvement to real property [within the CIC]” and “other parties responsible for any part of the design or construction of any portion of the [CIC]” and their “affiliates, or the officers, directors, partners, shareholders, members, managers, employees or servants of any of them.”¹¹

Practice Pointer: Because these provisions embrace personal injury claims, do they conflict with Colorado’s Premises Liability Act?¹²

Wheat Ridge defines a “construction defect” as any structure that does not conform in all material respects to the applicable building code, or does not conform to the manufacturer’s specifications if those specifications are more strict than the applicable building code provisions, “*and the effect of which is to materially lower the value of the structure or pose a safety risk to its occupants.*”¹³ Most other notice-repair ordinances omit the italicized language.¹⁴

Practice Pointer: Wheat Ridge’s “valuation” and “risk” components could prove problematic if HOAs conclude, in good faith, that an ordinance does not apply to “small” disputes or seemingly non-dangerous conditions, and a construction professional later seeks to bar the claim entirely for noncompliance with the ordinance.

It is unclear whether the definitions of “construction defect” in the notice-repair ordinances and “construction defect claim” in the general ordinances include consequential damages flowing from the defect, such as deteriorated drywall caused by water from a

leaking window, and thus whether the ordinance includes an accompanying repair obligation for such damage.

Practice Pointer: Failure to construe these terms broadly to include consequential damages may undermine the CD ordinances’ general purpose of streamlining litigation and CDARA’s purpose to assure homeowners of adequate CD rights and remedies.

Certain CD claims, such as those based on design defects and nonconformance with the plans and specifications or a design professional’s recommendations, may fall outside the scope of some CD ordinances’ definition of a “construction defect.” Where the claimant alleges one or more of these conditions, but the circumstances arguably overlap with a building code or manufacturer specification violation, the defendant construction professional may be in the unenviable position of establishing the latter to bring the claim within the ordinance’s scope.

Homeowner and Respondent

The definitions of “homeowner” in the notice-repair ordinances generally exclude CIOA declarants and security interest holders.¹⁵ One CD ordinance excludes governmental entities and employees as potential respondents through its definition of “builder” and description of “potential respondents.”¹⁶

Mandatory ADR and ADR Procedures

CD ordinances typically contain ADR provisions governing amendments to declarations and plats.

Declarations

Many CD ordinances provide that if an HOA’s declaration or other governing documents require CD claim arbitration, any later amendment deleting or changing the requirement is ineffective.¹⁷ However, these ordinances’ arbitration amendment prohibitions are limited to claims concerning alleged acts or omissions that predate the amendment, so amendments might properly delete application of an arbitration requirement applying to *subsequent* conduct, such as a later negligent repair or breach of repair warranty.

Denver, Fort Collins, and Parker prohibit HOAs from amending or deleting a declaration’s requirement for the declarant’s consent to delete an ADR provision.¹⁸ (Colorado Springs and Durango do not have similar anti-amendment provisions.) However, those limitations apply only if the declaration itself contains a lengthy, prescribed disclosure to this effect and the declaration’s ADR provision (1) inures to the benefit of other development parties, that is, potentially all construction professionals involved with constructing the CIC besides the declarant; (2) complies with the UAA, especially its “neutral” third-party arbitrator requirements; (3) requires the arbitration to occur locally; and (4) requires that Colorado substantive law governs. These ordinances provide that if “the remedy is substantially affected by the arbitrator’s failure to follow” Colorado substantive law, a “court may vacate or refuse to confirm the arbitrator’s award.”

Practice Pointer: This latter condition conflicts with the UAA’s scope of a district court’s permissible review,¹⁹ and it may be difficult to determine whether arbitrators, who generally need not explain the basis for their decisions, followed Colorado substantive law.²⁰

These CD ordinances also potentially run headlong into the prescribed amendment procedures of CIOA and Colorado's Revised Nonprofit Corporation Act (NRNCA), although under *Valaglio at Inverness Residential Condominium Association v. Metropolitan Homes, Inc.*,²¹ a declarant's reservation of veto power over such amendments currently is enforceable under those Acts.

Plats

The Arvada, Castle Rock, Parker, and Wheat Ridge plat recording ordinances encourage, if not authorize, CD claim arbitration through provisions in development plats rather than arbitration agreements in individual purchase agreements or CIC declarations.²² Each of these CD ordinances allows a final plat applicant to request that the plat include a prescribed statement specifying that particular claims involving a CIC be submitted to binding arbitration.²³

The Arvada provision broadly applies to claims that involve a construction defect; the CIC, a CIC owner, a construction professional, and/or a development-related entity or person (including anyone claiming through any of them); and that pertain to the CIC or its declaration. The construction defect must involve a structure that, when constructed, did not conform to the building code or a manufacturer's specifications, if the manufacturer's specifications are more stringent than the code.²⁴ It is unclear whether this definition includes design defects. The declaration may "implement and expand upon" the plat note's requirements.²⁵ The claim must be submitted to a qualified arbitration service provider under the UAA, and the arbitration costs and expenses must be borne equally by the parties.²⁶ (Disputes may arise in multi-party arbitrations about whether each party bears an equal cost and expense burden, and whether related parties may be treated as a single party.) All future lot or unit purchasers are deemed to have accepted and agreed to the recorded plat note, along with the CIC's HOA.²⁷ The person engaged in the initial sale of a CIC lot or unit must include in the sales contract a prominent disclosure statement in a form substantially prescribed by the ordinance.²⁸ The consequences of failing to make such disclosure are not stated. The plat applicant must certify to the city that the declaration prohibits the amendment or deletion of its arbitration provision without the applicant's consent.²⁹

Castle Rock, Parker, and Wheat Ridge have similar plat-recording provisions. Significantly, Castle Rock and Parker require that the mandatory binding arbitration must occur before a single arbitrator who is, at a minimum, a retired Colorado district court judge, or an organization employing such a retired judge, such as the Judicial Arbitrator Group (JAG), and that the cost and expenses of the arbitration be borne equally by the parties.³⁰ The limitations on who may serve as an arbitrator appear narrower than the UAA provides.³¹ A declaration may exempt certain claims from arbitration, such as lien foreclosures, assessment collection actions, and injunctions, but a later declaration amendment may not exempt CD claims by HOAs against construction professionals.³²

Similar to these plat note ordinances, Aurora adopted Resolution 2015-92 to "support" its notice-repair ordinance, allowing for plat notes, but without specifying language for those plat notes.³³ Like Parker, Aurora's plat resolution requires that arbitration be administered through an ADR service specified in the declaration, using a single arbitrator.³⁴ Upon claim resolution, the CIC manager must record a notice of claim resolution and release, although

the ordinance does not address the release's scope and what to do if the parties do not or cannot agree to the form of release.³⁵ The Castle Rock, Parker, and Wheat Ridge plat note ordinances and Aurora's resolution also prohibit amending the CD claim arbitration requirement out of the declaration.³⁶

Typical CD Ordinance Provisions

Cities typically address a number of items in their CD ordinances.

Applicability

While their exact language varies, many CD ordinances expressly apply to new construction or CICs created after their effective dates.³⁷ Others do not state their effective date.³⁸

Practice Pointer: Where ordinances do not expressly provide for either retroactive or prospective application, practitioners and courts will need to determine whether they were intended to be applied retroactively, and if so, whether doing so would be unconstitutionally retrospective.³⁹

CD Notices

Most CD ordinances are notice-repair ordinances. None of the notice-repair processes perfectly parallel CDARA's Notice of Claim Process (NCP).

Practice Pointer: The notice, entry, and repair provisions may raise questions related to state-sanctioned intrusion of private property rights, due process, equal protection, state versus home-rule authority, and preemption.⁴⁰ Parts 2 and 3 of this article will include a fuller discussion of these potentially thorny issues.

Nearly every notice-repair ordinance includes a notice provision like Aurora's: "Upon discovery of any alleged construction defect, the claimant must provide written notice via certified mail or personal delivery to the construction professional alleged to have caused or contributed to" the defect, including the claimant's name, address, and preferred contact method; a statement that the claimant alleges a defect "pursuant to this article" against the construction professional; and a description of the defect in "reasonable detail sufficient to determine the nature and location of the alleged construction defect."⁴¹ These notice provisions are accompanied by various requirements allowing for entry, inspection, testing, repair, and claim settlement, which are described below and in Part 2.⁴² Colorado Springs requires such a defect notice only if the defect affects more than one unit, or affects a common area or facility, and obligates only the HOA to give such notice.⁴³

For "common area or facility" claims, the CD notice generally limits the HOA's notice obligation—as opposed to an individual claimant's notice obligation—to any "common area or facility," which may possibly not be co-extensive with "common elements" as defined by CIOA.⁴⁴ Most notice-repair ordinances require all construction professionals who seek to take advantage of a particular CD ordinance to "[m]aintain an agent for notice with the Secretary of State."

Practice Pointer: Unwary persons and sole proprietors who fail to do so could be disqualified from the ordinance's application.⁴⁵ Sole proprietors do not register with the Colorado Secretary of State (SOS), so that office does not maintain this information.⁴⁶ It is unknown if the SOS could or would agree to maintain a registry for individuals and sole proprietorships.⁴⁷ Only Colo-

rado Springs appears to have recognized this quandary, exempting sole proprietors from this requirement.⁴⁸

The Arvada, Castle Rock, Denver, Fort Collins, and Parker ordinances do not appear to impose CD notice requirements beyond what CDARA provides. However, many other notice-repair ordinances overlap and potentially conflict with CDARA's notice of claim (NOC) and NCP requirements.⁴⁹

Practice Pointer: Because most CD ordinances have different CD claim timetables, and differ in their notice-entry-inspection-repair timing and substantive requirements, or omit some or all of such requirements, practitioners must carefully review the notice-repair ordinance before proceeding. Parts 2 and 3 will address constitutional and preemption issues that may arise due to these potential conflicts between the notice-repair ordinances and CDARA's NCP.

Many notice-repair ordinances require claimants to cite the ordinance in their notice. Unwary claimants who fail to satisfy this requirement may be able to cure such omission later, or a construction professional may be deemed to have waived this requirement by acknowledging and responding to the flawed notice.

Practice Pointer: While none of the notice-repair ordinances specifies the effect of a technically noncompliant notice, construction professionals may argue that strict satisfaction of the notice provisions operates as a condition precedent to pursuing a CD claim in court, raising the question whether cities can impose CD claim and lawsuit requirements more stringent than those imposed by state law.

Note that the proposed Lakewood ordinance initially imposed harsh penalties for noncompliance, which were removed by amendment during the city council hearing and vote. Because Lakewood was the first Colorado city to pass a CD ordinance, and because most other CD ordinances were modeled in part on the Lakewood ordinance, HOAs may argue that strict compliance is not required.

"Late" CD Notices

Several CD ordinances require a claimant to provide notice to a potentially responsible party "upon discovery" of a construction defect, but do not prescribe consequences for noncompliance. Courts may construe this to simply mean that such notice and the ensuing post-notice process need only be completed as a condition precedent to legal action. Or, courts might permit mitigation of damages and spoliation defenses to be based on any alleged late notice.

Practice Pointer: Construction professionals may argue that a failure to give such notice serves as a time-based defense to any claims, similar to an extremely shortened statute of limitations. If such argument is successful, questions will arise regarding whether immediate, prompt, timely, reasonable, or some other "notice period" supplies the appropriate notice deadline, and whether such limitations irreconcilably conflict with Colorado's statutes of limitation.

In the analogous context of insurance contracts requiring insureds to provide insurers notice of a claim immediately, promptly,

or as soon as practicable, Colorado courts have found that the time to give notice is what is “reasonable under the circumstances,” that delayed notice can be “reasonably excused,” and that even indisputably late notice will not result in a forfeiture of rights unless the complaining party can prove material prejudice.⁵⁰ Further, such notice requirements can be held in abeyance (tolled), waived, or the complaining party may be estopped from asserting them under proper circumstances.⁵¹ Strict enforcement could increase CD claim frequency if HOAs and homeowners fear that unless they give notice, their claims could be precluded, especially if seemingly small problems might later turn out to be more serious.

Practice Pointer: The words “upon discovery” in the notice requirements of nearly every notice-repair ordinance raise other concerns. First, the wording could be construed to conflict with CDARA’s NOC procedures, upsetting its NCP. Second, the requirement may be construed to conflict with CRS § 13-80-104’s statute of limitations applicable to CD claims, under which a claim accrues upon actual or constructive knowledge of “the physical manifestations of a defect,” and suit may be brought anytime within two years of such accrual, and possibly longer if CDARA tolls the limitations period.⁵² Third, the provision may conflict with many builders’ warranty procedures and deadlines. Fourth, claimants, who are typically uninvolved in the construction process, may be unable to identify all potentially responsible construction professionals when they discover a defect.

CD Notice Acknowledgement and Information Request and Response

Upon the construction professional’s receipt of notice, each notice-repair ordinance imposes unique requirements resulting in timetables that roughly track, but in some cases conflict with or accelerate, CDARA’s NCP timetable. For instance, Aurora requires that construction professionals (or their counsel) acknowledge receipt of the defect notice in writing to the homeowner-claimants (and their counsel, if counsel’s identity is known) within 30 days of receipt.⁵³ Also, upon the claimant’s separate request, the construction professional has 30 days to provide copies of all relevant plans, specifications, grading plans, soils reports, available engineering calculations, and maintenance and preventative maintenance recommendations pertaining to the residence, common areas, and facilities that are the claim’s subject.⁵⁴ Other notice-repair ordinances impose similar requirements on construction professionals after receiving notices of claim and information requests, with deadlines ranging from 14 to 45 days.⁵⁵ Reasonable copying costs may be charged, and construction professionals can sometimes insist that copies be made “on site.”

Practice Pointer: In large multifamily developments, it may be challenging for construction professionals to meet these information production deadlines, and disputes over what information is or is not “relevant” to the claim may arise.

Claimants might consider providing a notice of claim to both the business entity construction professional and all of its employ-

ees, agents, and subcontractors potentially liable for the construction defects, so that they will become subject to the CD ordinance's processes and obligations. Of course, including all such construction professionals might render the CD claim process unwieldy and ineffectual.

General Rights of Entry and Inspection

Many notice-repair ordinances give construction professionals and their agents rights to enter, inspect, and repair another's residence.⁵⁶

Practice Pointer: For HOA claimants, difficult questions may arise concerning the construction professional's right to enter and repair private residences. These issues raise state law preemption and constitutional concerns discussed more fully in Parts 2 and 3.

While both CIOA and most CIC declarations provide the HOA with a "repair easement" through units, and also impose certain reciprocal obligations on unit owners, it is unclear whether they properly authorize an HOA to require that a unit owner grant access in response to a third-party's demand to enter their unit, especially if the HOA itself questions such right of entry. Although entry and inspection can result in damage to portions of the property, CD ordinances generally require construction professionals to repair and restore damaged property.

Practice Pointer: Disputes over what constitutes a proper repair or restoration may occur, leading to ancillary litigation. If inspecting construction professionals destroy valuable evidence relating to their alleged original wrongful conduct, some CD ordinances purport to grant immunity from claims arising from such destruction or bar introducing evidence of the same. Parts 2 and 3 discuss these anti-spoilation provisions in more detail.

Rights of Entry and Inspection— Coordination and Cooperation

Aurora allows construction professionals to conduct site inspections and tests at a mutually agreeable date and time within 60 days after acknowledging the defect notice.⁵⁷ Thus, construction professionals have up to 90 days after receipt of the notice to complete these activities and, if desired, to coordinate them with their experts, subcontractors, and liability insurers. Declarant-developers and builders could try to initiate their own informal and parallel CD notice processes with their subcontractors under some CD ordinances, although the CD ordinances generally do not address this circumstance, and do not expressly toll the third-party claim limitations period. Other notice-repair ordinances are similar to Aurora's, although they vary in their specific requirements and deadlines. Some notice-repair ordinances conflict with CDARA's NOC and NCP processes and deadlines.

Practice Pointer: In large, multifamily developments, construction professionals may encounter difficulty scheduling and completing inspections within many notice-repair ordinances' short deadlines. Construction professionals have a very limited time—often just weeks—from receipt of the defect notice to complete their inspection.⁵⁸ These deadlines may become harder to satisfy if construction professionals engage independent experts to participate with regard to large, complicated claims. In the event of noncompliance, claimants may argue that the construction professionals waived the ordinance's application, and several or-

dinances expressly provide for this result. Critically, before a construction professional's liability insurer contributes to any inspection costs, it may require the insured construction professional to satisfy policy conditions, such as providing advance notice and obtaining the insurer's consent before engaging experts or inspecting the property, thus further delaying and complicating the inspection process.

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 2 will focus on CD ordinance rights of entry and repair, objections to repairs, and associated deadlines; limitations period tolling; the potential scope of the claim release related to reaching a CD claim monetary settlement; repair warranty regulation; the implications of later-discovered defects; and multifamily development pre-suit disclosure requirements.

Part 3 will discuss multifamily development pre-suit approval requirements; survey substantive, preemption, and state and federal constitutional concerns that CD ordinances implicate; and provide a streamlined practitioner's issues checklist for claimant and construction professional attorneys.

Notes

1. For discussion of these topics, see Benson, ed., *2 The Practitioner's Guide to Colorado Construction Law*, § 14.13.10: Reactions to Post-2008 Decline in Multi-Family Housing Construction (CBA-CLE 2d ed. 2015).

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. 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.

4. 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.

5. CRS §§ 13-20-801 et seq.

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

7. CRS §§ 38-33.3-101 et seq.

8. CRS §§ 13-22-201 et seq.

9. For a comprehensive discussion of CDARA, HPA, CIOA, and UAA in the CD claim setting, see Benson, *supra* note 1, §§ 14.1, et. seq., and Sandgrund et al., *Residential Construction Law in Colorado* (CBA-CLE 5th ed. 2015) (hereinafter *Residential Construction Law*).

10. Denver Code Ord. § 10-201(3); Fort Collins City Code § 5-351; Parker Mun. Code § 11.20.100.

11. Denver Code Ord. § 10-201(6); Fort Collins City Code § 5-351; Parker Mun. Code § 11.20.100.

12. CRS § 13-21-115. Many CD ordinance provisions, such as defect notice and right of repair provisions, make little sense when applied to per-

sonal injury claims and, if applicable, create a host of conflicts when read against personal injury tort and statutory law.

13. Wheat Ridge Code L. § 26-1302.

14. Aurora Code Ord. § 22-702(e); Centennial Mun. Code § 18-10-20(6); Commerce City Code Ord. § 5-19002; Durango Code Ord. Art. XI, § 6-2; Lakewood Mun. Code § 14.26.020; Littleton City Code § 4-7-2; Lone Tree Mun. Code § 18-12-20. Colorado Springs has its own definition:

Construction Defect: A defect in the design or construction of any improvement to real property that causes: a) actual damage to real or personal property, b) actual loss of use of real or personal property, c) bodily injury or wrongful death, or d) a substantial risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants of residential real property.

Colo. Springs Code Ord. § 6.14.103. Loveland's Ordinance states, "Construction defect means any alleged defect in the design or construction of an improvement to real property which causes any damages to, or the loss of use of, real or personal property, or personal injury." Loveland Mun. Code § 15.58.020.

15. Aurora Code Ord. § 22-702(f); Centennial Mun. Code § 18-10-20(7); Colorado Springs Code Ord. § 6.14.103; Commerce City Code Ord. § 5-19002; Durango Code Ord. § 6-2; Lakewood Mun. Code § 14.26.020; Littleton City Code § 4-7-2; Lone Tree Mun. Code § 18-12-20; Loveland Mun. Code § 15.58.020; Wheat Ridge Code L. § 26-1302 (Curiously, Wheat Ridge defines "Declarant" twice, separately in its own definition paragraph and then by incorporating the CIOA definition from CRS § 38-33.3-103(12) into the definition of "Homeowner.").

16. Lone Tree Mun. Code §§ 18-12-20 and -40.

17. Aurora Code Ord. § 22-710; Centennial Mun. Code § 18-10-100; Commerce City Code Ord. § 5-19009; Lakewood Mun. Code § 14.26.090; Littleton City Code § 4-7-9; Lone Tree Mun. Code § 18-12-90; Loveland Mun. Code § 15.58.100; Wheat Ridge Code L. § 26-1309.

18. Denver Code Ord. § 10-204; Fort Collins City Code § 5-354; Parker Mun. Code § 11.20.130.

19. Vacating, modifying, or correcting arbitration awards generally is permissible only on the narrow statutory grounds provided in CRS §§ 13-22-220, -223 or -224. Arbitrators do not exceed their authority by rendering decisions that run contrary to the legal rules that courts would apply, *Byerly v. Kirkpatrick Pettis Smith Polian, Inc.*, 996 P.2d 771, 775 (Colo.App. 2000), not even when the arbitrator manifestly disregards the law, *Coors Brewing Co. v. Cabo*, 114 P.3d 60 (Colo.App. 2004) (decided under former law). See also *Judd Constr. Co. v. Evans Joint Venture*, 642 P.2d 922, 926 (Colo. 1982) (arbitrator is the final judge of both fact and law).

20. See CRS § 13-22-219(1) (arbitrator need only make a record of an award); *Treadwell v. Vill. Homes of Colo., Inc.*, 222 P.3d 398, 401-02 (Colo. App. 2009) (arbitrator not required to explain reasons supporting award).

21. *Vallagio at Inverness Residential Condo. Ass'n v. Metro. Homes, Inc.*, 2015 COA 65 (May 7, 2015), cert. granted, June 20, 2016.

22. 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. See also Aurora Resolution No. 2015-92 § 1.

23. *Id.*

24. Arvada Land Dev. Code, § 3.8.3(D)(1).

25. *Id.*

26. *Id.*

27. *Id.*

28. Arvada Land Dev. Code, § 3.8.3(D)(2).

29. Arvada Land Dev. Code, § 3.8.3(D)(3).

30. Castle Rock Mun. Code § 17.24.050; Parker Mun. Code § 13.07.130(j); Wheat Ridge Code L. § 26-420.

31. Cf. CRS §§ 13-22-201(2) (arbitrator is any person appointed to render an award in an arbitration); -212 (suggesting any impartial person may serve as arbitrator).

32. Castle Rock Mun. Code § 17.24.050; Parker Mun. Code § 13.07.130(j); Wheat Ridge Code L. § 26-420.

33. Aurora adopted Resolution 2015-92, which allows the same sort of plat note. Douglas County also apparently allows plat notes anywhere in Douglas County. The efficacy of Douglas County's rule would be subject to a different analysis from that applicable to home-rule cities.

34. Aurora Resolution 2015-92 § 4.

35. Aurora Resolution 2015-92 § 5.

36. Castle Rock Mun. Code § 17.24.050 (in plat note text at ¶ (3)(c)); Parker Mun. Code § 13.07.130(j); Wheat Ridge Code L. § 26-420(A); Aurora Resolution 2015-92 § 3(c).

37. Arvada Code Ord. § 3.8.3(D)(3)(a); Aurora Code Ord. § 22-701(b) and Aurora Resolution 2015-92 § 6 (applies after effective date of Aurora Ord. No. 2015-35); Centennial Mun. Code § 18-10-10(b); Colorado Springs Code Ord. § 6.14.102; Commerce City Code Ord. § 5-19001; Denver Code Ord. § 10-205; Durango Code Ord. § 6-1(b); Fort Collins City Code § 5-350; Lakewood Mun. Code § 14.26.010(b); Littleton City Code § 4-7-1(B); Lone Tree Mun. Code § 18-12-10(b); Loveland Mun. Code § 15.58.010(B); Parker Mun. Code § 11.20.140; Wheat Ridge Code L. § 26-420(C); 26-1301.

38. Castle Rock Ord. No. 2015-59.

39. See generally *Specialty Restaurants v. Nelson*, 231 P.3d 393 (Colo. 2010); *Ficarra v. Div. of Ins.*, 849 P.2d 6, 15-17 (Colo. 1993); *Comm. for Better Health Care for all Colorado Citizens v. Meyer*, 830 P.2d 884, 891 (Colo. 1992). See also Sandgrund and Sullan, "House Bill 10-1394: New Law Governing Insurance Coverage For Construction Defect Claims," 39 *The Colorado Lawyer* 89, 93-94 (Aug. 2010) (retroactive/retrospective construction defect legislation discussion).

40. See generally *Silverstein v. Sisters of Charity of Leavenworth Health Servs. Corp.*, 559 P.2d 716, 718 (Colo.App. 1976) (where statute creates legal duties and provides particular means for their enforcement, the designated remedy preempts all others). For a detailed discussion of CDARA's NCP, see *Residential Construction Law*, supra note 9 at § 2.2.1, 11-27.

41. Aurora Code Ord. § 22-705(a). Compare Centennial Mun. Code § 18-10-50(a); Colorado Springs Code Ord. § 6.14.201; Commerce City Code Ord. § 5-19005(a); Durango Code Ord. § 6-5(a); Lakewood Mun. Code § 14.26.050(a); Littleton City Code § 4-7-5(A); Lone Tree Mun. Code § 18-12-50(a); Loveland Mun. Code § 15.58.050(A); Wheat Ridge Code L. § 26-1305(A).

42. *Id.*

43. Colorado Springs Code Ord. § 6.14.201.

44. Aurora Code Ord. § 22-705(a); Centennial Mun. Code § 18-10-50(a); Colorado Springs Code Ord. § 6.14.201; Commerce City Code Ord. § 5-19005(a); Durango Code Ord. § 6-5(a); Lakewood Mun. Code § 14.26.050(a); Littleton City Code § 4-7-5(A); Lone Tree Mun. Code § 18-12-50(a); Loveland Mun. Code § 15.58.050(A); Wheat Ridge Code L. § 26-1305(A).

45. Aurora Code Ord. § 22-705(b)(2); Centennial Mun. Code § 18-10-50(b)(2); Commerce City Code Ord. § 5-19005(b)(2); Durango Code Ord. § 6-5(b)(2); Lakewood Mun. Code § 14.26.050(b)(2); Littleton City Code § 4-7-5(B)(2); Lone Tree Mun. Code § 18-12-50(b)(2); Loveland Mun. Code § 15.58.050(B)(2); Wheat Ridge Code L. § 26-1305(B)(2).

46. See statutes and regulations for Colorado Secretary of State and frequently asked questions, www.sos.state.co.us.

47. Because SOS registers trade names for sole proprietorships, that registration might theoretically suffice if the person recording it includes the necessary contact information and agrees to accept service as required by the ordinance.

48. Colorado Springs Code Ord. § 6.14.202(B).

49. See CRS § 13-20-803.5.

50. See, e.g., *Clementi v. Nationwide Mut. Fire Ins. Co.*, 16 P.3d 223 (Colo. 2001) (adopting requirement that insurer prove both that insured's notice was inexcusably late and that prejudice resulted before insurer's late notice defense will bar claim).

51. See generally *Residential Construction Law*, supra note 9 at § 2.2.1 (discussing, generally, tolling of NCP and effect of noncompliance) and § 9.1.4 (discussing, generally, tolling of statutes of limitation and repose).

52. *See, e.g.*, CRS § 13-20-805.

53. Aurora Code Ord. § 22-705(b)(1).

54. Aurora Code Ord. § 22-705(b)(3) (because timing of this request is unspecified, it could be made any time before, coincident with, or after a claimant's notice).

55. Centennial Mun. Code § 18-10-50(b)(1) & (b)(3) (allowing 30 and 30 days, respectively); Colorado Springs Code Ord. § 6.14.202(C) and (D) (15 and 45 days); Commerce City Code Ord. § 5-19005(b)(1) and (b)(3) (14 and 14 days); Durango Code Ord. § 6-5(b)(1) and (b)(3) (14 and 14 days); Lakewood Mun. Code § 14.26.050(b)(1) and (b)(3) (14 and 14 days); Littleton City Code § 4-7-5(B)(1) and (B)(3) (14 and 14 days); Lone Tree Mun. Code § 18-12-50(B)(1) and (B)(3) (14 and 14 days); Loveland Mun. Code § 15.58.050(B)(2) (30 and 30 days); and Wheat Ridge Code L. § 26-1305(B)(1) and (B)(3) (14 and 30 days).

56. Aurora Code Ord. § 22-705(d); Centennial Mun. Code § 18-10-50(d); Colorado Springs Code Ord. § 6.14.202(D); Commerce City Code Ord. § 5-19005(d); Durango Code Ord. § 6-5(d); Lakewood Mun. Code § 14.26.050(d); Littleton City Code § 4-7-5(D); Lone Tree Mun. Code § 18-12-50(D); Loveland Mun. Code § 15.58.050(D); Wheat Ridge Code L. § 26-1305(B)(5).

57. Aurora Code Ord. § 22-705(d).

58. Aurora Code Ord. § 22-705(e); Centennial Mun. Code § 18-10-50(d); Colorado Springs Code Ord. § 6.14.202(E); Commerce City Code Ord. § 5-19005(e); Durango Code Ord. § 6-5(e); Lakewood Mun. Code § 14.26.050(e); Littleton City Code § 4-7-5(E); Lone Tree Mun. Code § 18-12-50(e); Loveland Mun. Code § 15.58.050(E); Wheat Ridge Code L. § 26-1305(B)(6).

The following chart details various provisions of the CD ordinances.



CONSTRUCTION LAW

Item	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs	Commerce City
Council Findings/Statement of Purpose.	x	x	x	x	x	x
Applicability						
To common interest communities created in the city/town after a designated date.						
To common interest communities that include residential units and were created in the city/town after a designated date.						
To new construction in residential, common interest communities created after a designated date.					Colo. Springs Code. Ord. § 6.14.102	
To new common interest community construction commenced after a designated date.		Aurora Code Ord. § 22-701(b)		Centennial Mun. Code § 18-10-10(b)		Commerce City Code Ord. Ch. IX § 5-19001
To new construction commenced under a building permit issued after the ordinance's effective date.						
When requested in a compliant plat note application for particular development types, which typically must be filed after a designated date.	Arvada Land Dev. Code § 3.8.3.D; 3.9.6	Aurora Resolution No. 2015-92 §§ 1 & 6	Castle Rock Mun. Code § 17.24.050			
Definitions						
Association = HOA governing certain owners' rights and responsibilities in a multi-family development.						
Association = CCIOA definition.						
Builder = Entity or individual who performs or furnishes design, supervision, inspection, construction, or observation of real property improvement intended to be occupied as a dwelling or to provide access or amenities to such an improvement.		702(a)		18-10-20(1)	6.14.103	19002
Builder = Nongovernmental individual or entity who performs or furnishes design, supervision, inspection, construction, or observation of any real property improvement intended to be occupied as a dwelling or to provide access or amenities to such an improvement.						
Building Codes = Current version of IBC, as adopted by the City.						
Building Code(s) = Several technical codes adopted by city to govern design, construction, alteration, addition, maintenance, repair, removal, demolition, location, use, and occupancy of buildings and structures in the city.		702(b)		18-10-20(2)		
Claimant = Original or subsequent homeowner in a common interest community, or HOA representing owners' interests, who provides the notice (minor variations and additional limitations exist).		703		18-10-30		19003

CONSTRUCTION LAW

Denver	Durango	Fort Collins	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
x	x	x	x	x	x	x		
Denver Code Ord. § 10-205							Parker Mun. Code § 11.20.140	
		Fort Collins City Code Art. VIII. § 5-350						
			Lakewood Mun. Code § 14.26.010	Littleton City Code § 4-7-1(B)	Lone Tree Mun. Code §18-12-10(b)	Loveland Mun. Code § 15.58.010 (B)		Wheat Ridge Code L. § 26-1301(B)
	Durango Code Ord. Art. XI, § 6-1(b)							
							Parker Ord. No. 3.286.2 (2014), §§ 1 & 4	Wheat Ridge Code L. § 26-420(C)
								1302
10-201(1)		5-351					11.20.100	
	6-2		14.26.020	4-7-2		15.58.020		1302
					18-12-20			
								1302
						15.58.020		
	6-3		14.26.030	4-7-3	18-12-30	15.58.030		1303

Item	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs	Commerce City
Common Interest Community = CCIOA definition.			17.24.050(3)(C)		6.14.103	
Common Interest Community = Real estate described in a declaration for which a unit owner is obligated to pay for taxes, insurance, maintenance, or other real estate improvements.		702(c)		18-10-20(4)		19002
Condominium = Common interest community in which portions of the real estate are designated for separate ownership and the remainder is designated for common ownership solely by the owners of the separate ownership portions. Unless the undivided interests in common elements are vested in unit owners, a common interest community is not a condominium.		702(d)		18-10-20(5)		19002
Construction Defect = Construction or design defect in real property improvement that causes damages to, or the loss of use of, real or personal property, or personal injury.				18-10-20(6)		
Construction Defect = Construction or design defect in real property improvement that causes damages to, or the loss of use of, real or personal property, or personal injury, including but not limited to any condition where a structure or portion of a structure does not conform in all material respects to the applicable code section(s) or does not conform to the manufacturer's specifications if the specifications are stricter than the code.		702(e)				
Construction Defect = Construction or design defect in real property improvement that causes damages to, or the loss of use of, real or personal property, bodily injury, or wrongful death or a substantial risk of bodily injury or death to, or a threat to the life, health, or safety of, the residential real property's occupants.					6.14.103	
Construction Defect = Any instance in which a structure or portion thereof does not conform in all material respects to the applicable sections of the city's building codes in force at the time of construction, or does not conform to the manufacturer's specifications in force at the time of construction, if the specifications are stricter than code.	3.8.3.D.1					
Construction Defect = Any instance in which a structure or portion of a structure does not conform in all material respects with the applicable building code sections, or does not conform to the manufacturer's specifications if the specifications are stricter than the code.						19002

CONSTRUCTION LAW

Denver	Durango	Fort Collins	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
10-201(2)		5-351					11.20.100	
	6-2			4-7-2	18-12-20	15.58.020		
	6-2			4-7-2	18-12-20	15.58.020		
						15.58.020		
					18-12-20			
	6-2		14.26.020	4-7-2				

CONSTRUCTION LAW

Item	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs	Commerce City
Construction Defect = Any instance in which a structure or portion thereof does not conform in all material respects to the applicable sections of the city's building codes, or does not conform to the manufacturer's specifications, if the specifications are stricter than code, and the effect of which is to materially lower the structure's value or pose a safety risk to its occupants.						
Construction Defect Claim = Claim or proceeding for damages, indemnity or contribution asserted against a development party for damage or loss to, or loss of use of, real or personal property or personal injury caused by a design or construction defect in a real property improvement in a common interest community.			17.24.050(3) (A)			
Cooperative = Common interest community in which the association owns real property, and each association member is entitled by their association ownership interest to exclusive possession of a unit.						
Declarant = CCIOA definition (quotes CCIOA or incorporates CCIOA's definition).					6.14.103	
Declaration = CCIOA definition.						
Development Party = An architect, contractor, subcontractor, developer, declarant, or affiliates of a declarant, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any real property improvement in a common interest community or any other party responsible for any part of the design or construction of any common interest community portion, or any of such parties' affiliates, or the officers, directors, partners, shareholders, members, managers, employees, or servants of any of them.						
Development Party = The subdivider, developer, or anyone claiming under or through such persons, any party that constructs or designs any portion of any of the property's residential dwelling units, and any construction professional as defined in CDARA, as amended.			17.24.050(3) (B)			
Executive Board = CCIOA definition.						
Governing Documents = Common interest community's declaration, articles of incorporation, bylaws, rules, and regulations, or policies and procedures.						
Homeowner = Person who owns a unit in a common interest community (depending on the ordinance, may include a condo, multi-family unit, or unit in a cooperative or planned community), excluding the declarant or any person with solely a security interest.		702(f)		18-10-20(7)		19002

CONSTRUCTION LAW

Denver	Durango	Fort Collins	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
								26-1302
0-201(3)	5-351						11.20.100	
					18-12-20			
10-201(4)		5-351	14.26.020	4-7-2	18-12-20		11.20.100	1302
10-201(5)		5-351					11.20.100	
10-201(6)		5-351					11.20.100	
10-201(7)		5-351					11.20.100	
10-201(8)		5-351					11.20.100	
	6-2		14.26.020	4-7-2	18-12-20	15.58.020		1302

CONSTRUCTION LAW

Item	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs	Commerce City
Homeowner = Unit owner in a residential, common interest community, including an HOA, but excluding any declarant or person with an interest in a unit solely as security for an obligation.					6.14.103	
HOA = CCIOA definition.					6.14.103	
HOA = Unit owners' association formed to represent the interest of homeowners owning units in a common interest community (slight variations among ordinances).		702(g)		18-10-20(8)		19002
Residential unit = Unit the declaration limits to residential use.						
Residential Use = CCIOA definition.						
Respondent = Builder, as defined by the chapter.		704		18-10-40		
Respondent = Builders who start projects after 8/1/15.						19004
Unit = CCIOA definition.						
Unit Owner = CCIOA definition.						
Notice of Construction Defects by Claimant to Respondent						
Requires the claimant to send notice upon discovery of alleged defect to party alleged to have caused or contributed to it.		705(a)		18-10-50(a)		19005(a)
Mandates that a duly authorized HOA shall give notice to development party upon discovery of alleged defect affecting more than one unit or affecting common areas.					6.14.201	
Prescribes notice content, which, depending on the ordinance, may include identifying information, reference to ordinance, alleged defect description, and recognition of a construction professional's right to inspect and test.		705(a)		18-10-50(a)	6.14.201	19005(a)
Prescribes notice delivery method, typically requiring delivery by certified mail or personal delivery.		705(a)		18-10-50(a)	6.14.201	19005(a)
Does not apply to ordinary warranty service requests in accord with warranty terms or to ordinary requests for performance in accord with a contract.					6.14.102	
Respondent's Responsibility After Defect Notice Receipt						
Must acknowledge claim/notice in writing within prescribed time period to person/entity identified by ordinance.		705(b)(1)(a)		18-1050(b)(1)(a)	6.14.202.A	19005(b)(1)(a)

CONSTRUCTION LAW

Denver	Durango	Fort Collins	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
	6-2			4-7-2	18-12-20	15.58.020		
		5-351						
		5-351						
	6-4		14.26.040	4-7-4	18-12-40	15.58.040		1304
10-201(9)		5-351					11.20.100	
10-201(10)		5-351					11.20.100	
	6-5(a)		14.26.050(A)	4-7-5(A)	18-12-50(a)	15.58.050(A)		1305(A)
	6-5(a)		14.26.050(A)	4-7-5(A)	18-12-50(a)	15.58.050(A)		1305(A)
	6-5(a)		14.26.050(A)	4-7-5(A)	18-12-50(a)	15.58.050(A)		1305(A)
	6-5(b)(1)(i)		14.26.050(B) (1)	4-7-5(B)(1)	18-12-50(b) (1)	15.58.050(B) (1)(a)		1305(B)(1)(a)

Item	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs	Commerce City
If requested by a specified party, builder/development party must provide, within a specified time period, copies of specified documents, which may include all relevant plans and specifications, grading plans, soils reports, and available engineering calculations pertaining to specified areas that are the subject of the claim; all maintenance and preventative maintenance recommendations pertaining to specified areas that are the subject of the claim; and contractual warranty information.		705(b)(3)		18-10-0(b)(3)	6.14.202.C	19005(b)(3)
Permits builder/development party to charge claimant copying costs and, in some instances, to require that copies be made at location specified by ordinance.		705(c)		18-10-50(c)	6.14.202.C	19005(c)
Does not limit the HOA's right to request other documents as authorized by law.					6.14.202.C	
Requires that builder/development party maintain an agent for notice with the Secretary of State (Colorado Springs exempts parties who are sole proprietors), or provide an address and contact person for notices under the ordinance.		705(b)(2)		18-10-50(b)(2)	6.14.202.B	19005(b)(2)
Releases claimant from Chapter's requirements, sometimes subject to homeowner notice and consent requirements, if development party fails to acknowledge receipt of notice within specified time.		705(b)(1)(b)		18-10-50(b)(1)(b)		19005(b)(1)(b)
Property Inspection						
Any testing or inspection the builder/development party elects to perform shall be completed within specified number of days from either date of notice or acknowledged receipt of notice, at a mutually agreeable date and time.		705(d)		18-10-50(d)	6.14.202.D	5-19005(d)
Any inspection or testing the builder/development party elects to perform shall be completed within 60 days after builder acknowledged notice receipt, at a mutually agreeable date and time, and with the claimant's written consent.						
The builder/development party shall bear all costs of inspection and testing, including damage caused by the inspection and testing or the cost to repair damage caused by inspection and testing.		705(d)		18-10-50(d)	6.14.202.D	5-19005(d)
Before entering onto premises for inspection, the builder/development party shall supply proof of liability insurance coverage.		705(d)		18-10-50(d)	6.14.202.D	5-19005(d)
Upon request, the builder/development party shall allow the inspection to be observed and recorded or photographed.		705(d)		18-10-50(d)	6.14.202.D	5-19005(d)
Nothing that occurs during inspection may be used or introduced as evidence to support a defense of spoliation of evidence by any potential party in later litigation.		705(d)		18-10-50(d)		5-19005(d)

CONSTRUCTION LAW

Denver	Durango	Fort Collins	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
	6-5(b)(3)		14.26.050(B) (3)	4-7-5(B)(3)	18-12-50(b) (3)	15.58.050(B) (3)		1305(B)(3)
	6-5(b)(4)		14.26.050(B) (4)	4-7-5(B)(4)	18-12-50(c)	15.58.050(C)		1305(B)(4)
	6-5(b)(2)		14.26.050(B) (2)	4-7-5(B)(2)	18-12-50(b) (2)	15.58.050(B) (2)		1305(B)(2)
	6-5(b)(1)(ii)		14.26.050(B) (1)	4-7-5(B)(1)	18-12-50(b) (1)	15.58.050(B) (1)(b)		1305(B)(1)(b)
	6-5(c)		14.26.050(B) (5)	4-7-5(B)(5)	18-12-50(d)			1305(B)(5)
						15.58.050(D)		
	6-5(c)		14.26.050(B) (5)	4-7-5(B)(5)	18-12-50(d)	15.58.050(D)		1305(B)(5)
	6-5(c)		14.26.050(B) (5)	4-7-5(B)(5)	18-12-50(d)	15.58.050(D)		1305(B)(5)
	6-5(c)		14.26.050(B) (5)	4-7-5(B)(5)	18-12-50(d)	15.58.050(D)		1305(B)(5)
	6-5(c)		14.26.050(B) (5)	4-7-5(B)(5)	18-12-50(d)			1305(B)(5)

Item	Arvada	Aurora	Castle Rock	Centennial	Colorado Springs	Commerce City
Nothing that occurs during inspection may be used or introduced as evidence to support a defense of spoliation of evidence by any potential party in later litigation, except as otherwise permitted by law.					6.14.202.D	
Within three days of completion of both the inspection and provision of documents requested pursuant to the notice, the development party shall provide the HOA written notice that the inspection and testing is complete and that requested documents have been provided, if applicable.					6.14.202.D	
A builder/development party who fails to comply with any requirements of this section within time specified shall not be entitled to its protections; the claimant shall be released from chapter's requirements and may proceed with filing of an action.						
A builder/development party who fails to comply with any requirements of this section within time specified shall not be entitled to its protections; and the claimant shall be released from chapter's requirements, unless the ordinance requires homeowner notice and consent.		705(e)		18-10-50(d)		5-19005(e)
A builder/development party who fails to comply with these requirements within time specified may not elect to proceed under section authorizing monetary settlement or right to repair, and HOA shall not be subject to any obligation under such section.					6.14.202.E	

CONSTRUCTION LAW

Denver	Durango	Fort Collins	Lakewood	Littleton	Lone Tree	Loveland	Parker	Wheat Ridge
			14.26.050(B) (5)					1305(B)(6)
	6-5(d)			4-7-5(B)(6)	18-12-50(e)	15.58.050(E)		