

State Laws Pose Challenges For Homeowners, Builders
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Owner-association statutes have led to large-scale suits

After precipitous declines since 2007, regional economic growth has pushed the demand for housing ahead to the point where, in the Denver metro area, home prices are hitting all-time highs that exceed even the pre-crash levels of 2006. According to the S&P/Case-Shiller Denver Home Price Index, as of April 30, home prices in the Denver market area were 50.58 percent higher than they were in January 2000, and more than 8 percent higher than a year ago.

This increase in housing prices has reignited concerns among many civic leaders in Colorado about affordable housing, and one problem that has been highlighted is a relative lack of condominium construction. Condominiums often are viewed as an affordable middle ground between apartments and single-family homes. However, as a recent report from InsideRealEstateNews indicated, citing statistics from the Home Builders Association of Metro Denver, condominiums accounted for only 1 percent of the total housing permits issued from Boulder to Castle Rock in 2013. Apartments accounted for 34 percent of the issued permits.

While the economic downturn is largely to blame for a sluggish condo-building sector, another factor blamed by builders and civic leaders is Colorado's set of laws related to construction defects. Construction-defects cases are addressed primarily in the Construction Defect Action Reform Act (CDARA), and also in portions of the Colorado Consumer Protection Act (CCPA).

CDARA sets forth procedures that construction-defects cases must follow, with specific requirements for notices to be provided, timelines for responses, lists of alleged defects, inspection processes and offers to settle or repair, among other points. Parties involved in a construction-defect case must pay close attention to those details.

CDARA has been a center of controversy between advocates for homeowners and advocates for home builders. Since it became effective in 2001, CDARA has been amended in 2003 (known as CDARA II) and in 2007 (through the Homeowner Protection Act of 2007), and was the subject of three more legislative bills in 2014, although none of the bills passed this year.

Over the years, the changes to CDARA sought by builders have focused largely on placing limits on the kinds and amounts of damages that owners can pursue (such as the areas where triple damages are allowed through the CCPA), and on requiring opportunities to repair alleged defects before lawsuits are brought. Changes sought by owners, for example, have included limits on the ability of builders to insert provisions in their contracts whereby owners waive rights to various claims or damages.

Another problem with condominiums arises out of Colorado's owner-association statutes, set forth in the Colorado Common Interest Ownership Act. That act gives an owner association

the power to “institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common-interest community.” For better or for worse, this provision has been invoked in large-scale lawsuits alleging extensive construction defects in large condominium communities.

While this may, in some cases, be a boon for the owners, such actions are the bane of condo builders, and such cases are one reason builders’ insurance costs are so high. Multiple online sources indicate that builders of condo developments containing 100 or more units get sued, rightly or wrongly, at least 80 percent of the time, that builders’ insurance costs for multi-family condos are three to four times as expensive as insurance costs for multi-family apartments, and the number of available insurance carriers for Colorado condo builders has dwindled from twenty in 2008 to five or six now.

CDARA undoubtedly will remain a focus of political attention. More bills to amend CDARA provisions are likely to arise next year, and the powerful competing constituencies of homebuilders and homeowners are sure to keep the debate a lively one.

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