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Colorado Legislative Preview: An Early Look at Construction Defects Reform in 2017

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The Colorado General Assembly kicked off the first day of the 2017 legislative session by proposing a new bill to address construction defects reform.

Colorado's current construction defects law has stifled the condominium market by making it easy for homeowners to file class-action lawsuits against developers. As a result, developers' insurance premiums have skyrocketed and Colorado's condominium supply has plummeted to less than five-percent of Colorado's new-home inventory.

Senate Bill 45, co-sponsored by Senate President Kevin Grantham and House Speaker Crisanta Duran, is designed to reduce developers' insurance premiums. Under current construction defects law, a general contractor does not have a claim for contribution against its subcontractors. Therefore, when a general contractor is sued for construction defects, the general contractor must sue its subcontractors to recoup a portion of its defense costs. Some lawmakers contend that this intermediary litigation between general contractors and subcontractors drives up insurance premiums due to the uncertainty of who will ultimately pay. Senate Bill 45 aims to reduce insurance premiums by eliminating this intermediary litigation by giving general contractors a claim for contribution against their subcontractors. Additionally, Senate Bill 45 requires Colorado courts to hold an expedited evidentiary hearing within 90 days of the general contractor's claim to (1) decide the contribution claim, unless the parties resolve it through a mutually agreeable process, and (2) apportion the defense costs between the parties, including reasonable attorney's fees, on an interim basis pending conclusion of the underlying construction defects claim.

While some Colorado lawmakers view Senate Bill 45 as meaningful reform, others argue that reform cannot be truly meaningful without measures that make it more difficult for homeowners to sue developers in the first place. Therefore, we may see lawmakers resurrect proposals from bills that failed to pass in previous legislative sessions, including bills designed to tighten the vote required to proceed with a construction defects lawsuits or to require mandatory binding arbitration for such lawsuits. However, proposals of the latter nature will be impacted by the Colorado Supreme Court in March when it addresses whether mandatory arbitration clauses that restrict homeowners' ability to take their cases to court are enforceable.

The Colorado General Assembly is less than three weeks into the 2017 legislative session. Lawmakers will consider hundreds of bills this session, and given the limited format of this publication, this is not intended to be a comprehensive overview of all the bills regarding construction defects litigation reform or of other issues that may impact the real estate industry during the legislative session.

Ottens Johnson's attorneys have substantial experience with helping clients navigate business issues like those highlighted in this alert. For more information, or for help evaluating your current situation contact any of the attorneys in the [Real Estate Practice Group](#).

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