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City of Aurora, Colorado adopts Construction Defect Reform Ordinance to Promote Condominium Development and Reduce Litigation

In 2007, the Colorado Legislature passed the Homeowner Protection Act (HPA). The HPA made it significantly easier for property owners and homeowners' associations to bring construction defect claims against homebuilders. As a result, Colorado has seen a dramatic increase in both the number of construction defect lawsuits being filed and the damages awarded to the plaintiffs filing such lawsuits.

The HPA has had an unusually devastating impact upon condominium developers and builders. Over the past decade, condominium construction in Colorado has slowed dramatically due to the inability of condominium builders to obtain insurance for their projects. In turn, cities have seen an important segment of their affordable housing market virtually disappear. This was of particular concern to Aurora, where new condominium construction is considered vital to the proper development of transit station areas along the Aurora light rail line.

The Colorado Legislature has been unwilling to adopt legislation favorable to the condominium industry, leaving it up to cities to find a solution. Similar to the Cities of Lakewood and Lone Tree, on September 14, 2015, Aurora amended Chapter 22 of the City Code to add Article XVII – Repair of Construction Defects, Section 22-701 *et seq.*, which provides in pertinent part, four key elements designed to avoid the expense of litigation and promote condominium development:

1. The condominium builder is given the right to repair any construction defects prior to the filing of a lawsuit. Importantly, under the new ordinance, the builder's right to repair is not dependent upon the owner's approval of same. However, the builder may modify its repair recommendation to accommodate the owner's repair concerns. Repairs must be warranted for two years;

2. A homeowners' association must obtain the consent of a majority of the homeowners in order to file a lawsuit;
3. The condominium builder is given the option of offering a monetary settlement in lieu of pursuing repairs, which if accepted, may be recorded with the Clerk and Recorder's Office; and
4. Subsequent amendments to alternative dispute resolution provisions contained in community declarations, bylaws, or rules and regulations are deemed void and shall not be effective with regard to any construction defect claim that is based on an alleged act or omission that predates the amendment.

The goal of Aurora's ordinance is to reduce the costs of litigation associated with construction defects in residential housing, particularly with respect to the condominium industry. Aurora hopes the ordinance will have a positive impact upon the construction of new condominium units in the City, thereby expanding home ownership opportunities for new and existing residents.



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