



Fact Sheet

Construction Defects Ordinance

Published 10/26/2015

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For Business Development

Background

- Despite economic recovery nearing pre-recession levels in all other housing product types, condo construction continues to be markedly below normal. According to metro Denver permit data compiled by Metrostudy, condos as a share of single-family starts has **dropped from 25% in 2007 to 3.4% in 2015**. Builders must take extraordinary and costly measures to produce condos, increasing price points and decreasing production of units.
- **Denver will see upwards of 50,000 new residents in the next 5 years and needs a diversity of housing types to remain a vibrant and thriving city.** This must include ownership opportunities.
- Limited green field development opportunities in Denver places further importance on a denser product type for a **healthy mix of housing choices**.
- With 41 rail stations in Denver – at least 9 of which have significant development potential – the city is poised to capitalize on opportunities for true mixed-use, walkable developments and must not lose the ability to include a true mix of housing type at those locations.
- Existing state laws have created an environment of increased litigation risk for condo development that results in inordinately high insurance costs – up to 3x more to insure for-sale multifamily product than for-rent, according to insurance industry sources.
- Failure to act by the state legislature for 3 successive years has forced cities to take action to move the needle on this intractable problem. Metro cities like Lakewood, Littleton, Lone Tree, Commerce City & Aurora have now passed local construction defects ordinances.

Proposed Ordinance

- Includes three components that seek to increase efficacy in producing condos in Denver and **complement** existing state law rather than conflicting with it. Two components are unique to Denver and have not appeared in other local ordinances.
- Strives to find a **balance** between consumer protection and certainty of process for all involved
- Respects and protects rights of home owners in situations of truly defective construction but guards against frivolous actions

Key Ordinance Features

- Address the **manner in which Denver building codes may or may not be used in construction defect claims** arising under any statutory or common law cause of action.
 - o Building code violations may only be cause for action if linked to **actual damage or injury** or risk thereof. No “strict liability” claims.
 - o Denver’s codes represent the standard for construction. Other codes/standards may not be applied in litigation
- **Codify the holding in *Vallagio***: where covenants in a common interest community require Alternative Dispute Resolution (arbitration or mediation) for construction defect claims, the covenant cannot be unilaterally eliminated by the Home Owners Association.
 - o Advises a buyer of the terms under which a builder was willing to build and sell product and holds that the covenant permanently governs procedure for future claims
- **Informed consent** of a majority of homeowners in a common interest community and majority vote requirement before litigation can be pursued.
 - o Similar to a component of SB 15-177 that enjoyed bipartisan support in the Colorado Senate
 - o Excludes developer-owned units in the vote

Other Key Facts

- Significant stakeholder outreach was part of the process for bringing forward this ordinance
- The proposed ordinance reflects an important step in addressing this issue but **does not negate the need for the State to act**. Ultimately, State action is needed for true reform.