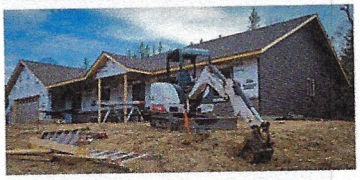
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HOAs

Advertorial

What Colorado Homeowners Should Know About Construction Defect Laws



The last things a homeowner wants to see are leaking roofs, crumbling concrete, or subtle signs of worsening foundation problems. Yet construction defects in Colorado new-build housing can cause all of these issues and more for homeowners who just want a safe, comfortable place to live.

"I had a case recently in Jefferson County where a large home was settling, causing large cracks in the walls — doors not shutting, windows hard to open," said Craig Nuss, shareholder at Burg Simpson and co-department leader for the firm's construction defect department. "They closed their pantry door once, and it took days to get it open again. It's a terrible way to live in a house."

Construction defects are especially prevalent during building booms in Colorado, which draw in out-of-state builders, developers, and subcontractors who aren't accustomed to building for Colorado's soil or weather, Nuss said.

At Burg Simpson, Nuss and his Colorado construction defect law team regularly handle claims about faulty foundations, water leaks, and other defects that can not only destroy a home's resale value but also make it unlivable for current owners.

Rules and Regulations for Colorado Construction Defect Claims

Colorado construction defect law is generally governed by the Construction Defect Action Reform Act (CDARA), which dictates what kinds of claims homeowners can bring and the damages they can receive.

The act contains two important deadlines for homeowners: the statute of repose and the statute of limitations. According to the statute of repose, homeowners have six years (extended 2 years if defects appear in the 5th or 6th year) from the time their home is completed to file any construction defect claim.

"It's an absolute cutoff, and it's one of the shorter deadlines in the country," Nuss said. "For example, Arizona has a six-year statute of repose."

Within the repose timeline, the statute of limitations dictates that homeowners have two years from the time they discovered or reasonably should have discovered a construction defect to bring a claim about that specific issue. The two-year clock starts to run when a homeowner sees evidence of a defect like wall cracks or leaking pipes.

CDARA also limits a homeowner's damages to the lesser of the cost of repair or the value of the home without defects. However, single-family homeowners can generally collect other damages for items like engineering costs and emotional distress.

"Arbitrators or juries often give damages for emotional distress because this is usually the homeowners' largest purchase," Nuss said. "Often a family's financial planning is based on owning a home, and now you're worried about, 'Can I sell it? Is it worth less?' Homeowners have sleepless nights when they lay in bed worrying about the future of their home."

The CDARA process applies equally to homeowners, apartment owners, and commercial property owners, but HOAs filing claims face a longer process. To move forward with a defect claim, an HOA's board and 65% of member homeowners must approve filing suit.

Navigating a Builder Warranty in Colorado

Most builders offer a warranty in the home purchase contracts. Unfortunately, these same contracts often contain language to the effect that the homeowners by signing the contract are waiving all other claims under Colorado law, including the breach of implied warranties. In Colorado, builders of residential property impliedly guarantee the new property is fit for occupancy and constructed in compliance with industry standards for quality and durability.

Such prohibitive language isn't legal, though — the Colorado's Homeowner Protection Act prohibits builders from including contract language that limits a homeowner's rights to take legal action beyond the one- or two-year warranties offered by the builders.

"It's still showing up in contracts despite the law," Nuss said. "I've even had cases where people talk to non-construction defect attorneys and have been told that their claims have all been waived. And then they come talk to me or another defect attorney and we say, 'No, no, we can fight that.'"

What to Do When You Spot or Suspect an Issue

If you notice a home defect within six years of your home's completion, don't rely on the builder to make it good.

Homeowners can usually pause the clock on the statute of limitations by sending a written notice to the builder alerting them to the issues. However, homeowners shouldn't just reach out to the builder and then rely on continued verbal claims that the defects will be fixed or monitored.

"I think it's time to escalate to seeking legal advice if it is just getting pushed down the road and things aren't happening," Nuss said. "When you're told, 'Let's keep monitoring, it's going to go away,' it doesn't. So, if the homeowner feels they're not getting a fast response from the builder and repairs are not getting made, then it's time to talk to an attorney."

A qualified, experienced construction defect attorney in Colorado can help a homeowner navigate the claims process and understand when the statute of limitations clock starts, pauses, and runs out.

Common Colorado Construction Defects to Watch For

Home defects usually fall under one of three categories:

- **Construction defects:** These defects represent some failure to comply with building codes, plans, or industry standards that cause or will likely cause a home to have performance issues and cause actual damage to the home.
- **Patent defects:** These are defects that should be readily apparent to a trained building professional during a home inspection. Often these items fall into the punch list category and should be addressed by the builder before closing.
- **Latent defects:** These defects were present at the time of construction but take time to manifest or detect. For example, a waterproofing issue might take several years to start causing leaks or rotting.

Water damage is a common new construction home defect. Leaks often show up around windows and doors, in roofs and at points where roofs and vertical walls meet, at penetration points like vents, and at balcony and deck attachment points.

"The problem is, you don't see that happening until some type of manifestation comes up," Nuss said. "We've had cases where engineers will remove siding or stucco and can actually put their hand through the wood of the framing, because it's so rotted."

Foundation issues also pose a risk for new-build homes in Colorado. Builders have historically built on pier foundations to account for Colorado's expansive soils, but they've increasingly adopted a process called over-excavation.

In over-excavation, builders will dig up 20 or 30 feet of soil from the lot, recondition the expansive soils, put the soil back in the lot, then build the house on footers, not piers. The process is cheaper, but it can also cause significant settling if the builder doesn't correctly compact the soil.

Leaking pipes are also an issue, said Nuss, who noted that plastic domestic water pipes can crack and leak causing catastrophic damage.

What to Expect from a Construction Defect Case

While builders must carry workers' compensation, they are not required to have liability insurance to build a new home. If a builder doesn't have liability insurance or carries minimal insurance, a homeowner might not get enough money for their repairs.

"This fact really surprises homeowners," Nuss said. "They're like, 'I pay for my home insurance, I pay for my car insurance — what do you mean builders don't have to have insurance?'"

When surprises like this strike, you need an experienced home defect attorney with the resources to fight for you. Nuss recently worked with a group of young homeowners in Denver who quickly discovered that their floors were not level and the roofs and windows were leaking.

The developer didn't have insurance, so they sued the general contractor, who brought in the subcontractors. Nuss and his clients settled that claim, then pushed onward by bringing a claim against the developer. After six years of litigation, the homeowners finally had the funds to make the most urgent repairs.

Colorado homeowners should also know about a new law called the Colorado American Dream Act, which went into effect in 2026. The bill creates a program in which builders who agree to be part of the program provide written general, mechanical, and structural warranties and have third-party independent inspectors review their work to verify building code compliance. What is unique about the program, is that the builder can be entitled to attorney's fees at the end of the case if the homeowners rejected a "reasonable offer." Conversely, homeowners can recover attorney's fees if the builder fails to make a reasonable offer. It is too early to tell whether builders will agree to participate in this program.

Nuss and his team of Colorado construction defect lawyers are experienced in these cases and are ready to help Colorado homeowners. Contact their Denver office at 303-790-2525 to schedule a consultation.

The news and editorial staffs of The Denver Post had no role in this post's preparation.

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