

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0865.02 Duane Gall x4335

SENATE BILL 17-157

SENATE SPONSORSHIP

Williams A.,

HOUSE SPONSORSHIP

Melton,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING PREREQUISITES FOR THE AUTHORITY OF A UNIT OWNERS'
102 ASSOCIATION TO PURSUE LITIGATION INVOLVING ALLEGED
103 CONSTRUCTION DEFECTS, AND, IN CONNECTION THEREWITH,
104 IMPOSING NOTIFICATION, DISCLOSURE, AND VOTING
105 REQUIREMENTS PRIOR TO COMMENCEMENT OF AN ACTION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires that, before the executive board of a unit owners' association (HOA) in a common interest community brings suit against

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

a developer or builder on behalf of unit owners, the board must:

- ! Notify all unit owners; and
- ! Except when the HOA contracted with the developer or builder for the work complained of or the amount in controversy is less than \$100,000, obtain the approval of a majority of the unit owners after giving them detailed disclosures about the lawsuit and its potential costs and benefits.

The bill also limits the amount and type of contact that a developer or builder that is potentially subject to a lawsuit may have with individual unit owners while the HOA is seeking their approval for the lawsuit.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 38-33.3-102, **amend**
3 (1) introductory portion; and **add** (1)(f) as follows:

4 **38-33.3-102. Legislative declaration.** (1) The general assembly
5 hereby finds, determines, and declares: ~~as follows:~~

6 (f) THAT THE PROCESS FOR DISCLOSURE TO AND SECURING
7 INFORMED CONSENT FROM UNIT OWNERS, AS SET FORTH IN SECTION
8 38-33.3-303.5, IS A MATTER OF STATEWIDE CONCERN AND SUPERSEDES
9 ANY PROVISION IN THE DECLARATION, ARTICLES, BYLAWS, OR RULES AND
10 REGULATIONS OF A COMMON INTEREST COMMUNITY REGARDING THE
11 MANNER IN WHICH AN ASSOCIATION PROVIDES DISCLOSURE AND OBTAINS
12 APPROVAL TO INSTITUTE A CONSTRUCTION DEFECT ACTION, WHETHER OR
13 NOT THE PROVISION CONFLICTS WITH THAT SECTION.

14 **SECTION 2.** In Colorado Revised Statutes, 38-33.3-303.5,
15 **amend** (1) and (2); and **add** (4) as follows:

16 **38-33.3-303.5. Construction defect actions - disclosure -**
17 **approval by unit owners - definitions - exemptions.** (1) (a) ~~In the event~~
18 BEFORE the executive board, pursuant to section 38-33.3-302 (1)(d),
19 institutes ~~an~~ A CONSTRUCTION DEFECT action, ~~asserting defects in the~~

1 ~~construction of five or more units, the provisions of this section shall~~
2 ~~apply. For purposes of this section, "action" shall have the same meaning~~
3 ~~as set forth in section 13-20-803 (1), C.R.S.~~

4 ~~(b) the executive board shall substantially comply with the~~
5 ~~provisions of this section.~~

6 (b) FOR THE PURPOSES OF THIS SECTION ONLY:

7 (I) "CONSTRUCTION DEFECT ACTION":

8 (A) MEANS ANY CIVIL ACTION OR ARBITRATION PROCEEDING FOR
9 DAMAGES, INDEMNITY, SUBROGATION, OR CONTRIBUTION BROUGHT
10 AGAINST A DEVELOPMENT PARTY TO ASSERT A CLAIM, COUNTERCLAIM,
11 CROSS-CLAIM, OR THIRD-PARTY CLAIM FOR DAMAGES OR LOSS TO, OR THE
12 LOSS OF USE OF, REAL OR PERSONAL PROPERTY OR PERSONAL INJURY
13 CAUSED BY A DEFECT IN THE DESIGN OR CONSTRUCTION OF AN
14 IMPROVEMENT TO REAL PROPERTY THAT IS PART OF THE COMMON
15 INTEREST COMMUNITY; AND

16 (B) INCLUDES ANY RELATED, ANCILLARY, OR DERIVATIVE CLAIM,
17 AND ANY CLAIM FOR BREACH OF FIDUCIARY DUTY OR AN ACT OR OMISSION
18 OF A MEMBER OF AN ASSOCIATION'S EXECUTIVE BOARD, THAT ARISES
19 FROM AN ALLEGED CONSTRUCTION DEFECT OR THAT SEEKS THE SAME OR
20 SIMILAR DAMAGES.

21 (II) "DEVELOPMENT PARTY" MEANS AN ARCHITECT, CONTRACTOR,
22 SUBCONTRACTOR, DEVELOPER, DECLARANT, AFFILIATE OF A DECLARANT,
23 BUILDER, BUILDER VENDOR, ENGINEER, OR INSPECTOR PERFORMING OR
24 FURNISHING THE DESIGN, SUPERVISION, INSPECTION, CONSTRUCTION, OR
25 OBSERVATION OF THE CONSTRUCTION OF ANY IMPROVEMENT TO REAL
26 PROPERTY THAT IS PART OF THE COMMON INTEREST COMMUNITY; ANY
27 OTHER PARTY RESPONSIBLE FOR ANY PART OF THE DESIGN,

1 CONSTRUCTION, OR REPAIR OF ANY PORTION OF THE COMMON INTEREST
2 COMMUNITY, OR ANY OF SUCH PARTIES' AFFILIATES; AND ANY OF THE
3 OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS,
4 EMPLOYEES, SERVANTS, OR AGENTS OF ANY PARTY DESCRIBED IN THIS
5 SUBSECTION (1)(b)(II).

6 (c) A CONSTRUCTION DEFECT ACTION SEEKING DAMAGES VALUED,
7 IN GOOD FAITH, AT LESS THAN ONE HUNDRED THOUSAND DOLLARS IS NOT
8 SUBJECT TO ANY NOTICE OR OWNER VOTE REQUIREMENTS PURSUANT TO
9 THIS SECTION.

10 (d) WITH RESPECT TO A CONSTRUCTION DEFECT ACTION THAT IS
11 BASED ON ALLEGED DEFECTS IN THE CONSTRUCTION, RENOVATION, OR
12 REPAIR WORK IN A COMMON INTEREST COMMUNITY AND IN WHICH THE
13 ASSOCIATION WAS THE CONTRACTING PARTY FOR THE PERFORMANCE OF
14 THE WORK:

15 (I) THE EXECUTIVE BOARD SHALL, PRIOR TO THE SERVICE OF
16 SUMMONS AND COMPLAINT, PROVIDE NOTICE OF THE COMMENCEMENT OR
17 ANTICIPATED COMMENCEMENT OF THE ACTION TO THE UNIT OWNERS. THE
18 NOTICE MAY BE GIVEN BY ELECTRONIC MAIL, BY ANNOUNCEMENT AT A
19 MEETING, OR OTHERWISE.

20 (II) AFTER GIVING THE NOTICE REQUIRED BY SUBSECTION (1)(d)(I)
21 OF THIS SECTION, THE EXECUTIVE BOARD MAY INITIATE THE
22 CONSTRUCTION DEFECT ACTION WITHOUT FURTHER NOTICE OR APPROVAL
23 BY THE UNIT OWNERS.

24 (e) **Disclosure - required terms.** (I) FOR ANY CONSTRUCTION
25 DEFECT ACTION OTHER THAN THOSE DESCRIBED IN SUBSECTION (1)(c) OR
26 (1)(d) OF THIS SECTION, NO LATER THAN ONE HUNDRED EIGHTY DAYS
27 BEFORE FILING A CONSTRUCTION DEFECT ACTION AGAINST A

1 DEVELOPMENT PARTY, THE EXECUTIVE BOARD SHALL MAIL OR DELIVER
2 WRITTEN NOTICE OF THE ANTICIPATED COMMENCEMENT OF THE ACTION TO
3 EACH UNIT OWNER AT THE OWNER'S LAST-KNOWN ADDRESS DESCRIBED IN
4 THE ASSOCIATION'S RECORDS. THIS NOTICE REQUIREMENT DOES NOT
5 APPLY TO JOINED PARTIES IN AN ACTION PREVIOUSLY APPROVED BY
6 OWNERS PURSUANT TO SUBSECTION (1)(f) OF THIS SECTION.

7 (II) THE NOTICE GIVEN PURSUANT TO THIS SUBSECTION (1)(e)
8 MUST CALL A MEETING OF THE UNIT OWNERS TO CONSIDER WHETHER TO
9 BRING A CONSTRUCTION DEFECT ACTION, STATE A GENERAL DESCRIPTION
10 OF THE NATURE OF THE CONSTRUCTION DEFECT ACTION AND THE RELIEF
11 SOUGHT, AND CONTAIN ANY OTHER PERTINENT INFORMATION AS WELL AS
12 THE FOLLOWING DISCLOSURES:

13 (A) THE ALLEGED CONSTRUCTION DEFECTS MIGHT RESULT IN
14 INCREASED COSTS TO THE ASSOCIATION IN MAINTENANCE OR REPAIR OR
15 CAUSE AN INCREASE IN ASSESSMENTS OR SPECIAL ASSESSMENTS TO COVER
16 THE COST OF REPAIRS.

17 (B) IF THE ASSOCIATION DOES NOT FILE A CLAIM BEFORE THE
18 APPLICABLE LEGAL DEADLINES, THE CLAIM WILL EXPIRE.

19 (C) UNTIL THE ALLEGED DEFECTS ARE REPAIRED, SELLERS OF
20 UNITS WITHIN THE COMMON INTEREST COMMUNITY MIGHT OWE UNIT
21 BUYERS A DUTY TO DISCLOSE KNOWN DEFECTS.

22 (D) THE EXECUTIVE BOARD (INTENDS TO ENTER) (HAS ENTERED)
23 INTO A FEE ARRANGEMENT WITH THE ATTORNEYS REPRESENTING THE
24 ASSOCIATION, UNDER WHICH (THE ATTORNEYS WILL BE PAID A
25 CONTINGENCY FEE EQUAL TO _____ PERCENT OF THE (NET) (GROSS)
26 RECOVERY OF THE AMOUNT THE ASSOCIATION RECOVERS FROM THE
27 DEFENDANT(S)) (THE ASSOCIATION'S ATTORNEYS WILL BE COMPENSATED

1 AS FOLLOWS: _____).

2 (E) IN ADDITION TO ATTORNEY FEES, THE ASSOCIATION MAY INCUR
3 UP TO \$_____ FOR LEGAL COSTS, INCLUDING EXPERT WITNESSES,
4 DEPOSITIONS, AND FILING FEES. THE AMOUNT WILL NOT BE EXCEEDED
5 WITHOUT THE EXECUTIVE BOARD'S FURTHER WRITTEN AUTHORITY. IF THE
6 ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, THE ASSOCIATION (MIGHT)
7 (WILL) (WILL NOT) BE RESPONSIBLE FOR PAYING THESE LEGAL EXPENSES.

8 (F) IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, THE
9 ASSOCIATION (MIGHT) (WILL) (WILL NOT) BE RESPONSIBLE FOR PAYING ITS
10 ATTORNEY FEES.

11 (G) IF THE ASSOCIATION DOES NOT PREVAIL ON ITS CLAIM, A
12 COURT OR ARBITRATOR SOMETIMES AWARDS COSTS AND ATTORNEY FEES
13 TO THE OPPOSING PARTY. SHOULD THAT HAPPEN IN THIS CASE, THE
14 ASSOCIATION (MIGHT) (WILL) (WILL NOT) BE RESPONSIBLE FOR PAYING THE
15 OPPOSING PARTY'S COSTS AND FEES AS A RESULT OF SUCH AWARD.

16 (H) THERE IS NO GUARANTEE THAT THE ASSOCIATION WILL
17 RECOVER ENOUGH FUNDS TO REPAIR THE CLAIMED CONSTRUCTION
18 DEFECT(S). IF THE CLAIMED DEFECTS ARE NOT REPAIRED, ADDITIONAL
19 DAMAGE TO PROPERTY AND A REDUCTION IN THE USEFUL LIFE OF THE
20 COMMON ELEMENTS MIGHT OCCUR.

21 (I) UNTIL THE CLAIMED CONSTRUCTION DEFECTS ARE REPAIRED,
22 OR UNTIL THE CONSTRUCTION DEFECT CLAIM IS CONCLUDED, THE MARKET
23 VALUE OF THE UNITS IN THE ASSOCIATION MIGHT BE ADVERSELY
24 AFFECTED.

25 (J) UNTIL THE CLAIMED CONSTRUCTION DEFECT(S) ARE REPAIRED,
26 OR UNTIL THE CONSTRUCTION DEFECT(S) CLAIM IS CONCLUDED, OWNERS
27 IN THE ASSOCIATION MIGHT HAVE DIFFICULTY REFINANCING AND

1 PROSPECTIVE BUYERS MIGHT HAVE DIFFICULTY OBTAINING FINANCING.

2 (III) THE NOTICE GIVEN PURSUANT TO THIS SUBSECTION (1)(e)
3 MUST ALSO STATE THAT:

4 (A) THE MEETING CALLED TO CONSIDER THE PROPOSED
5 CONSTRUCTION DEFECT ACTION IS THE FIRST DAY OF THE
6 ONE-HUNDRED-EIGHTY-DAY VOTING PERIOD DURING WHICH THE
7 ASSOCIATION WILL ACCEPT VOTES FOR AND AGAINST PROCEEDING WITH
8 THE ACTION; AND

9 (B) A DEVELOPMENT PARTY IS PROHIBITED FROM ATTEMPTING TO
10 GAIN AN ABSTENTION OR "NO" VOTE BY ANY THREAT OR INDUCEMENT
11 LISTED IN SUBSECTION (1)(g)(X) OF THIS SECTION.

12 (f) **Approval by unit owners - procedures.** (I) (A) FOR ANY
13 CONSTRUCTION DEFECT ACTION OTHER THAN THOSE DESCRIBED IN
14 SUBSECTION (1)(c) OR (1)(d) OF THIS SECTION, THE EXECUTIVE BOARD
15 MAY INITIATE THE ACTION IF SO AUTHORIZED, AT THE MEETING CALLED IN
16 ACCORDANCE WITH SUBSECTION (1)(e)(II) OF THIS SECTION OR
17 THEREAFTER DURING THE VOTING PERIOD, BY OWNERS OF UNITS TO WHICH
18 A MAJORITY OF VOTES IN THE ASSOCIATION ARE ALLOCATED. A QUORUM
19 IS NOT REQUIRED AT THE MEETING. SUCH APPROVAL IS NOT REQUIRED FOR
20 AN ASSOCIATION IN A PLANNED COMMUNITY TO PROCEED WITH A
21 CONSTRUCTION DEFECT ACTION WHERE THE ALLEGED CONSTRUCTION
22 DEFECTS DO NOT INCLUDE OR AFFECT STRUCTURES CONTAINING
23 RESIDENTIAL USES.

24 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN
25 OWNER'S VOTE MAY BE OBTAINED IN ANY WRITTEN FORMAT CONFIRMING
26 THE OWNER'S VOTE TO APPROVE OR REJECT THE PROPOSED CONSTRUCTION
27 DEFECT ACTION.

1 (II) ANY APPLICABLE STATUTES OF LIMITATION AND REPOSE ARE
2 TOLLED DURING THE VOTING PERIOD; EXCEPT THAT NOTHING IN THIS
3 SECTION ALTERS THE TOLLING PROVISIONS OF SECTION 13-20-805.

4 (III) **Vote count - exclusions.** FOR PURPOSES OF CALCULATING
5 THE REQUIRED MAJORITY VOTE UNDER THIS SUBSECTION (1)(f) ONLY, THE
6 FOLLOWING VOTES ARE EXCLUDED:

7 (A) ANY VOTES ALLOCATED TO UNITS OWNED BY DEVELOPMENT
8 PARTIES;

9 (B) ANY VOTES ALLOCATED TO UNITS OWNED BY INDIVIDUALS
10 WITH ACTIVE DUTY STATUS IN THE UNITED STATES MILITARY, AS VERIFIED
11 ON A CERTIFICATE PROVIDED PURSUANT TO THE "SERVICEMEMBERS CIVIL
12 RELIEF ACT", 50 U.S.C. SEC. 3901 ET SEQ., AS AMENDED, UNLESS A VOTE
13 FROM SUCH OWNER IS ACTUALLY RECEIVED BY THE ASSOCIATION;

14 (C) ANY VOTES ALLOCATED TO UNITS OWNED BY BANKING
15 INSTITUTIONS, UNLESS A VOTE FROM SUCH OWNER IS ACTUALLY RECEIVED
16 BY THE ASSOCIATION;

17 (D) ANY VOTES ALLOCATED TO UNITS OF A PRODUCT TYPE IN
18 WHICH NO DEFECTS ARE ALLEGED IF: THE COMMUNITY IS A PLANNED
19 COMMUNITY CONTAINING UNITS OF DIFFERENT PRODUCT TYPES, SUCH AS
20 SINGLE-FAMILY DETACHED HOMES, PATIO HOMES, TOWNHOMES, OR
21 DUPLEXES, THAT ARE GOVERNED BY THE SAME ASSOCIATION AND THE
22 UNITS OF THE PRODUCT TYPE WITH THE CLAIMED CONSTRUCTION DEFECTS
23 ARE NOT GOVERNED BY A SUBASSOCIATION; THERE ARE CLAIMED DEFECTS
24 IN LESS THAN ALL PRODUCT TYPES; AND THE DECLARATION PROVIDES FOR
25 DISTINCT COMMON EXPENSE LIABILITIES BETWEEN THE PRODUCT TYPES.
26 IF VOTES ARE EXCLUDED UNDER THIS SUBSECTION (1)(f)(III)(D) AND IF, IN
27 CONNECTION WITH THE CONSTRUCTION DEFECT ACTION, OWNERS ARE

1 ASSESSED FOR ANY COSTS INCURRED, THE ASSOCIATION SHALL NOT ASSESS
2 THE OWNERS OF UNITS FROM WHOM VOTES WERE EXCLUDED FOR ANY
3 COSTS INCURRED IN CONNECTION WITH THE CONSTRUCTION DEFECT
4 ACTION.

5 (E) ANY VOTES ALLOCATED TO UNITS OWNED BY OWNERS WHO
6 ARE DEEMED NONRESPONSIVE BY A COURT. IN MAKING SUCH A
7 DETERMINATION, THE COURT SHALL CONSIDER WHETHER THE EXECUTIVE
8 BOARD HAS MADE DILIGENT EFFORTS TO CONTACT THE UNIT OWNER
9 REGARDING THE VOTE AND MAY CONSIDER: WHETHER A MAILING WAS
10 RETURNED AS UNDELIVERABLE; WHETHER THE OWNER APPEARS TO BE
11 RESIDING AT THE UNIT; AND WHETHER THE ASSOCIATION HAS USED OTHER
12 CONTACT INFORMATION, SUCH AS AN ELECTRONIC MAIL ADDRESS OR
13 TELEPHONE NUMBER FOR THE OWNER.

14 (g) **Development party's communication with unit owners.** A
15 DEVELOPMENT PARTY'S COMMUNICATION WITH UNIT OWNERS REGARDING
16 A CONSTRUCTION DEFECT ACTION IS GOVERNED BY THE FOLLOWING:

17 (I) A DEVELOPMENT PARTY MAY CONTACT UNIT OWNERS BEFORE
18 THE COMMENCEMENT OF THE VOTING PERIOD REGARDING THE
19 CONSTRUCTION DEFECT ACTION.

20 (II) ANY DEVELOPMENT PARTY NAMED IN A NOTICE OF CLAIM
21 DELIVERED BY AN ASSOCIATION PURSUANT TO SECTION 13-20-803.5 MAY,
22 WITHIN FIVE BUSINESS DAYS AFTER EXPIRATION OF THE NOTICE-OF-CLAIM
23 PROCESS OR REJECTION OF THE NOTICE-OF-CLAIM OFFER, DELIVER A
24 WRITTEN STATEMENT TO THE ASSOCIATION FOR DISTRIBUTION TO THE UNIT
25 OWNERS ENTITLED TO VOTE AS PART OF THE NOTICE GIVEN BY THE
26 ASSOCIATION UNDER SUBSECTION (1)(e) OF THIS SECTION, WHICH
27 STATEMENT MUST BE PROVIDED BY THE DEVELOPMENT PARTY TO THE

1 ASSOCIATION IN BOTH HARD COPY AND ELECTRONIC FORMAT.

2 (III) IF THE ASSOCIATION SUBMITS AN AMENDED NOTICE OF CLAIM
3 TO ANY DEVELOPMENT PARTY PURSUANT TO SECTION 13-20-803.5, THAT
4 DEVELOPMENT PARTY MAY, WITHIN FIVE BUSINESS DAYS AFTER
5 EXPIRATION OF THE AMENDED NOTICE-OF-CLAIM PROCESS OR REJECTION
6 OF THE AMENDED NOTICE-OF-CLAIM OFFER, DELIVER A SUPPLEMENTAL
7 WRITTEN STATEMENT ADDRESSING THE AMENDED NOTICE OF CLAIM. THE
8 ASSOCIATION SHALL PROVIDE WITHIN FIVE BUSINESS DAYS, BY MAIL OR
9 ELECTRONIC MEANS, THE SUPPLEMENTAL WRITTEN STATEMENT PROVIDED
10 BY ANY DEVELOPMENT PARTY NAMED IN THE AMENDED NOTICE OF CLAIM
11 TO THE OWNERS, WHICH STATEMENT MUST BE PROVIDED BY THE
12 DEVELOPMENT PARTY TO THE ASSOCIATION IN BOTH HARD COPY AND
13 ELECTRONIC FORMAT.

14 (IV) IF THE WRITTEN STATEMENTS WITH ANY ATTACHMENTS FROM
15 A DEVELOPMENT PARTY ALLOWED UNDER THIS SECTION EXCEED TEN
16 PAGES, THEN THE DEVELOPMENT PARTY MUST PROVIDE THE ASSOCIATION
17 WITH A SUMMARY OF NO MORE THAN TEN PAGES. THE SUMMARY MUST BE
18 INCLUDED WITH THE NOTICE TO OWNERS UNDER SUBSECTIONS (1)(e) AND
19 (1)(g)(II) OR (1)(g)(III) OF THIS SECTION, AS APPLICABLE. IN SUCH EVENT,
20 THE ASSOCIATION SHALL MAKE THE ENTIRE WRITTEN STATEMENT AND
21 ATTACHMENTS AVAILABLE TO OWNERS IN AN ELECTRONIC FORMAT.

22 (V) IN AT LEAST ONE WRITTEN COMMUNICATION, WHICH MAY
23 INCLUDE ELECTRONIC MAIL, SENT TO THE OWNERS BY THE ASSOCIATION
24 BEFORE THE MEETING OF THE OWNERS TO CONSIDER THE CONSTRUCTION
25 DEFECT ACTION, THE ASSOCIATION SHALL REMIND THE OWNERS THAT ALL
26 MATERIALS RELEVANT TO THE VOTE, INCLUDING THE DEVELOPMENT
27 PARTY'S WRITTEN STATEMENT AND ATTACHMENTS, ARE AVAILABLE IN AN

1 ELECTRONIC FORMAT.

2 (VI) THE ASSOCIATION SHALL MAINTAIN VERIFIABLE
3 DOCUMENTATION OF ALL MAILINGS TO OWNERS CONTAINING WRITTEN
4 STATEMENTS AND ATTACHMENTS FROM DEVELOPMENT PARTIES, ALONG
5 WITH MAILING LISTS FOR THE OWNERS TO WHOM SUCH STATEMENTS WERE
6 MAILED. DOCUMENTATION SHALL BE DEEMED VERIFIED IF A SPECIMEN
7 COPY OF THE MATERIALS SENT AND THE MAILING LIST TO WHOM SUCH
8 STATEMENTS WERE MAILED IS CERTIFIED BY AN ASSOCIATION OFFICER OR
9 AGENT. IF THE ASSOCIATION COMMENCES A CONSTRUCTION DEFECT
10 ACTION AGAINST ANY DEVELOPMENT PARTY, THE ASSOCIATION SHALL FILE
11 ALL DOCUMENTATION OF MAILINGS CONTAINING WRITTEN STATEMENTS
12 FROM DEVELOPMENT PARTIES WITH THE COURT UNDER SEAL FOR IN
13 CAMERA REVIEW.

14 (VII) UPON REQUEST, THE DEVELOPMENT PARTY SHALL PAY FOR
15 THE ACTUAL COSTS OF ALL COPIES OF THE DEVELOPMENT PARTY'S
16 WRITTEN STATEMENT AND ATTACHMENTS.

17 (VIII) AT LEAST THREE BUSINESS DAYS BEFORE THE MAILING OF
18 THE NOTICE REQUIRED BY SUBSECTION (1)(e) OF THIS SECTION, THE
19 ASSOCIATION SHALL NOTIFY EACH DEVELOPMENT PARTY LISTED IN THE
20 NOTICE OF CLAIM BY MAIL, AT ITS LAST-KNOWN ADDRESS, OF THE DATE
21 AND TIME OF THE MEETING CALLED TO CONSIDER THE CONSTRUCTION
22 DEFECT ACTION PURSUANT TO SUBSECTION (1)(e) OF THIS SECTION.

23 (IX) DURING THE VOTING PERIOD, A DEVELOPMENT PARTY SHALL
24 NOT INITIATE CONTACT WITH OWNERS REGARDING THE VOTE EXCEPT TO
25 ANSWER AN OWNER'S QUESTIONS.

26 (X) A DEVELOPMENT PARTY SHALL NOT ATTEMPT TO GAIN AN
27 ABSTENTION OR "NO" VOTE FROM AN OWNER WITH RESPECT TO THE VOTE

1 UNDER SUBSECTION (1)(f) OF THIS SECTION BY THREATENING THE UNIT
2 OWNER; INTERROGATING THE UNIT OWNER; PROMISING THE UNIT OWNER
3 ADDITIONAL BENEFITS, WHETHER MONETARY OR IN-KIND; OR REQUIRING
4 A UNIT OWNER TO VOTE NO AS A CONDITION TO PURCHASE AND SALE OF
5 THE UNIT; EXCEPT THAT THIS SUBSECTION (1)(g)(X) DOES NOT PRECLUDE
6 A DEVELOPMENT PARTY FROM TAKING A UNIT OWNER'S DEPOSITION IN A
7 CONSTRUCTION DEFECT ACTION.

8 (XI) IF THE ASSOCIATION BELIEVES THAT A DEVELOPMENT PARTY
9 IS VIOLATING THIS SUBSECTION (1)(g), THE ASSOCIATION MAY SEEK A
10 TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, OR BOTH.

11 (XII) IF A DEVELOPMENT PARTY IS FOUND TO HAVE VIOLATED THIS
12 SUBSECTION (1)(g) WITH RESPECT TO A PARTICULAR UNIT OWNER, THAT
13 OWNER IS DEEMED TO HAVE GIVEN HIS OR HER CONSENT TO THE PROPOSED
14 CONSTRUCTION DEFECT ACTION. IN ADDITION, THE ASSOCIATION MAY
15 REQUEST THAT THE COURT DEEM THAT SOME OR ALL OF THE OTHER
16 OWNERS HAVE VOTED TO GIVE THEIR CONSENT TO THE PROPOSED
17 CONSTRUCTION DEFECT ACTION IF THE COURT FINDS THAT THE
18 DEVELOPMENT PARTY'S VIOLATION OF THIS SUBSECTION (1)(g) DID NOT
19 OCCUR IN GOOD FAITH UNDER THE CIRCUMSTANCES.

20 (2) (a) ~~Prior to the service of the summons and complaint on any~~
21 ~~defendant with respect to an action governed by this section, the~~
22 ~~executive board shall mail or deliver written notice of the commencement~~
23 ~~or anticipated commencement of such action to each unit owner at the last~~
24 ~~known address described in the association's records~~ ANY NOTICE,
25 DISCLOSURE, BALLOT OR REQUEST FOR VOTE, OR OTHER COMMUNICATION
26 OR RECORD FROM AN ASSOCIATION TO UNIT OWNERS UNDER SUBSECTION
27 (1) OF THIS SECTION SHALL BE CONSIDERED PROPERLY GIVEN IF SENT BY

1 ELECTRONIC MAIL TO A UNIT OWNER WHO HAS FURNISHED THE
2 ASSOCIATION WITH HIS OR HER ELECTRONIC MAIL ADDRESS.

3 ~~(b) The notice required by paragraph (a) of this subsection (2)~~
4 ~~shall state a general description of the following:~~

5 ~~(I) The nature of the action and the relief sought; and~~

6 ~~(II) The expenses and fees that the executive board anticipates~~
7 ~~will be incurred in prosecuting the action.~~

8 (4) **Provisions not severable.** NOTWITHSTANDING SECTION
9 2-4-204, THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES
10 THAT IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY
11 PERSON OR CIRCUMSTANCE IS HELD INVALID, THE ENTIRE SECTION SHALL
12 BE DEEMED INVALID.

13 **SECTION 3. Act subject to petition - effective date -**
14 **applicability.** (1) This act takes effect September 1, 2017; except that,
15 if a referendum petition is filed pursuant to section 1 (3) of article V of
16 the state constitution against this act or an item, section, or part of this act
17 within the ninety-day period after final adjournment of the general
18 assembly, then the act, item, section, or part will not take effect unless
19 approved by the people at the general election to be held in November
20 2018 and, in such case, will take effect on the date of the official
21 declaration of the vote thereon by the governor.

22 (2) This act applies to construction defect actions as to which the
23 cause of action accrued on or after the applicable effective date of this
24 act.