COLORADO ASSOCIATION OF HOME BUILDERS

June 4, 2025

HB25-1272: What You Need to Know

HB25-1272 created the Multifamily Construction Incentive Program (MCIP). On or after January 1, 2026, a builder or developer may choose to participate in the program by:

- Providing a warranty that covers any defect and damage at no cost to the homeowner for specified periods;
- Having a third-party inspection performed on the property; and
- Recording a notice of election to participate in the program in the chain of title in the real property records.

For construction defects claims brought for the construction of housing for which the builder is a participant in the program, the bill:

- Requires a claimant to file a certificate of review with the complaint, if the complaint is against an architect or engineer;
- Limits actions to claims that have resulted in: Damage that substantially affects the functionality of a system or the safety of real or personal property, other than a condition that has not caused any substantial physical change; actual loss of the use of real or personal property; actual bodily injury or wrongful death; an unreasonable reduction in the capability of, or an actual failure of, a building component to perform an intended function or purpose; or an unreasonable risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants of the residential property;
- Establishes the statute of limitations at 8 years after the substantial completion of the improvement or deficiency or 6 years if the construction professional has provided a written warranty (professionals other than architects and engineers) or performed with reasonable care (architects and engineers); and
- Requires that a construction professional must send or deliver to the claimant an offer to settle the claim or a written response that identifies the standards that apply to the claim and explains why the defect does not require repair.

Advisory:

- **It will be important for builders to consult with legal counsel and your insurer before opting into the program.** Once committed, the program may increase exposure while limiting strategic flexibility and offering no new, substantive protections.

- Insurance agencies have shared with us that underwriters of for-sale multifamily CGL policies have concerns with some of the parameters of the program and how claims within the program will be handled, and whether the program increases the risk of litigation instead of mitigating it.
- **Consult with your trade partners before opting into the program.** The procedural burdens, disclosure obligations and litigation timelines in the program will affect construction professionals as well. Trade partners may not want to perform work on MCIP projects due to the concerns outlined above.

Unintended Consequence:

- Mistakenly, Section 4 of the bill applies to notices of claims outside the MCIP. Specifically, subsections 3.5, 3.7 and 13 will apply to all claims, whether a builder or developer has opted into the MCIP or not.
- Correcting this issue—and having Section 4 apply only to claims under the MCIP as originally intended—will require further legislative action in 2026. Until a legislative fix is enacted, the requirements of **Section 4 will apply to all CDARA claims beginning on August 6, 2025**.
  - Effectively, this means that all construction professionals are subject to the enhanced disclosure obligations in subsections 3.5 (builders/developers/subcontractors) and 3.7 (architects, engineers, etc.).
  - These disclosure obligations are essentially a timing issue. All the documentation designated for disclosure in subsections 3.5 and 3.7 would otherwise be subject to discovery in litigation (whether via mandatory initial disclosures or in response to appropriate discovery requests).
  - Thus, until clarifying legislation is passed, construction professionals must make a choice concerning how they will handle the early disclosure provisions. They may choose to comply, understanding that the information will eventually come out after a suit is filed anyway. Or they may choose to delay disclosure until a lawsuit is actually filed, realizing that Section 4 contains no penalty for non-compliance with subsections 3.5 and 3.7 unless such non-compliance continues past the deadline—in an ensuing CDARA litigation—for non-party at fault designations.
  - Either way, construction professionals must be mindful of providing the specified information prior to the deadline for non-party at fault to preserve their ability to designate non-parties at fault, should such designation(s) be warranted under the facts of a given case.
- Follow up legislation to clarify the intent of HB25-1272 – that Section 4 only apply to program claims – will be needed, and the CAHB intends to work with other stakeholders to pursue such a bill during the 2026 legislative session of Colorado's General Assembly.

The bill did yield a substantial and positive impact: It raised from a simple majority to 65% of unit owners the vote threshold HOAs must achieve to commence litigation. This change applies to all CDARA claims, whether subject to the MCIP or not, and like Section 4 will become effective August 6 of 2025.