

Construction Defect Lawsuits Threaten Arizona's Housing Reforms

Legal Reform Could Unlock Arizona's Missing Condos

» by Jackson Moll + David Godlewski • September 2025



“Housing reforms like HB 2721 mean little if lawsuits keep driving up costs and pricing thousands of Arizona families out.”

Hard-working Arizona families are struggling with rising housing costs. Legislators have noticed and are taking action. In the last few legislative sessions, several housing bills were introduced to address affordability concerns. One measure, HB 2721 signed into law in 2024, sought to legalize the “missing middle” housing products throughout Arizona by reforming local zoning¹.

Throughout the country, other states have adopted similar bills to legalize townhomes, duplexes, triplexes, and other attached products that appeal to young professionals, families, and seniors². While zoning reforms like HB 2721 help to bring these more affordable products to market, the obstacles to middle housing construction spread beyond local zoning.

Throughout the United States, construction defect lawsuits are all too common, especially on attached products. The risk of liability due to construction defect lawsuits and the reluctance of insurers to cover these projects serves as headwind to construction. Even where builders assume the litigation risk and insurance is available, the costs price out buyers.

In 2024, the International Risk Management Institute published an article on the impact of construction defect litigation on insurance³.

Unfortunately, in some states, the impact of construction defect claims on coverage availability and affordability has reached crisis status. Subcontractors, in particular, have experienced a drying up of insurance markets because much of the risk from construction defects falls in their laps. Arizona, California, Colorado, Florida, Nevada, Texas, and Washington have the most significant construction defect problems, but many other states are experiencing increased litigation in this area as well.

In response, some states adopted various reforms to curtail this type of litigation. For instance, Texas⁴ and Florida⁵ reduced their statutes of repose, limiting how long a party can sue after the home is built.

In 2025, Colorado enacted HB25-1272, which created an incentive program for attached products⁶. To qualify, builders need to provide buyers with a no-cost warranty for a specified time, conduct third-party inspections, and record a notice of participation in the program. In exchange, the scope of potential claims is limited. Time will tell whether this will have meaningful results.

Here in Arizona, we are facing a more looming problem that may set us back even further. A case currently before the Arizona Supreme Court raises the prospect of even more construction defect litigation. This case asks whether a Homeowners Association (“HOA”) can bring a claim against the builder for alleged defects to individual homes⁷. In other words, can the HOA sue for alleged defects to property it does not own?

In response, the Home Builders Association of Central Arizona and the Southern Arizona Home Builders Association filed an amicus brief in support of the builder’s petition for review. In the brief, we shared our vision of what an HOA victory means for buyers and builders. Aside from “allow[ing] HOAs to assume control over individual homeowners, whose decision-making authority as to their own homes has always been (and should be) sacrosanct,” such a result would also hurt housing costs.

[M]iddle housing developments are those in which HOAs often play some role in maintenance – i.e., the types of communities for which the [Court of Appeals] Opinion would permit HOAs to bring claims regarding homes they don’t own. To be clear, developers of smaller communities are already burdened by higher costs, because they don’t receive the benefits of economies of scale. But construction defect litigation initiated by non-owner HOAs will only worsen that situation, as it directly impacts insurance coverage and costs, and, by extension, home prices. These costs are not insignificant; they contribute thousands and thousands of dollars to home prices.

With the median home price in Phoenix currently sitting around \$450,000 and \$405,000 in Tucson, a couple thousand-dollar increase may not seem like much⁸. But, home buyers, particularly first-time buyers, are incredibly price sensitive. According to research by the National Association of Home Builders, a mere \$1,000 increase in the median home price will price out 2,532 Arizona families⁹.

Over the past decade, Arizona has taken steps to curb excessive construction defect litigation. In 2015, Arizona gave builders the right to repair alleged defects before litigation commences¹⁰. Then again in 2019, the Arizona legislature limited the recovery of attorney fees, which are the primary driver of this litigation¹¹. These reforms helped to harmonize the interests of reducing frivolous lawsuits and protecting homeowners’ investments.

There is no question, however, that more can be done. If Arizona is going to resolve our current housing crisis, we must take steps to not only legalize more affordable forms of housing, but we must also rein in abusive lawsuits that threaten the viability of all housing.

- 1 <https://www.azleg.gov/legtext/56leg/2R/laws/0197.pdf>
- 2 See, https://upforgrowth.org/news_insights/the-role-of-middle-housing-in-tackling-americas-housing-challenge/
- 3 <https://www.irmi.com/articles/expert-commentary/construction-defect-trend-produces-coverage-restricting-endorsements>
- 4 <https://legiscan.com/TX/text/HB2024/id/2811886/Texas-2023-HB2024-Enrolled.html>
- 5 <https://www.flsenate.gov/Session/Bill/2023/360/BillText/er/PDF>
- 6 <https://leg.colorado.gov/bills/hb25-1272>
- 7 [Gallery Community Ass’n v. K. Hovnanian at Gallery, LLC, CV-24-0252-PR](#)
- 8 See, <https://www.redfin.com/city/14240/AZ/Phoenix/housing-market>
- 9 https://www.nahb.org/-/media/NAHB/news-and-economics/docs/housing-economics/priced-out/2025-state_2025.pdf
- 10 <https://www.azleg.gov/legtext/52leg/1r/laws/0060.PDF>
- 11 <https://www.azleg.gov/legtext/54leg/1R/laws/0060.pdf>

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