

CONSTRUCTION DEFECTS LITIGATION REFORM: **STATEWIDE**

By Dennis Huspeni

THE WINDS OF CHANGE are blowing around the hot-button issue of reforming condominium construction defects litigation in Colorado.

It's been an uphill battle for home builders in Colorado since 2010, but progress has been evident this year.

Just look at this revealing statistic: In mid-September when Aurora passed a law to create a more condo-construction friendly environment, it became the eighth and largest municipality in Colorado to do so. There are millions of people living in those Front Range cities and counties, including Arvada, Lakewood, Lone Tree, Douglas County and Commerce City.

The new city laws give builders the right to repair defects within a certain time period and place new requirements on homeowners' consent before a construction-defects lawsuit can be filed.

"Builders favor measures to protect homebuyers from shoddy workmanship with valid consumer protections," said Scott Smith, Colorado Association of Home Builders (CAHB) CEO. "Reforms should be aimed at protecting the consumers from the excessive costs and inconveniences of the current construction defects litigation environment."

Reform measures are now being championed by several cities and counties.

"The mayors are frustrated with the inability of the state Legislature and the state Democratic leadership to get anything done,"

said Tom Clark, CEO of the Metro Denver Economic Development Corp. "They took matters into their own hands this year. As many as 2 million citizens are now covered by construction defects ordinances at the local level. If that isn't a strong enough measure of support for the legislators to see, I don't know what is."

What's more, as reported in the Summer 2015 edition of Colorado Builder Forum, the Colorado Court of Appeals ruled in the case of *Vallagio at Inverness Residential Condominium Association Inc. v. Metropolitan Homes Inc.* that the developer's consent wasn't required to remove the arbitration provision because it violated the Colorado Common Interest Ownership Act.

The plaintiffs have appealed the ruling to the Colorado Supreme Court, which had made no decisions as of press time.

CAHB Joins Forces with Affordable-Housing Advocates

Clark is a spokesman for the Homeownership Opportunity Alliance (HOA) — a coalition of economic developers, metro-area mayors, and affordable-housing advocates and builders.

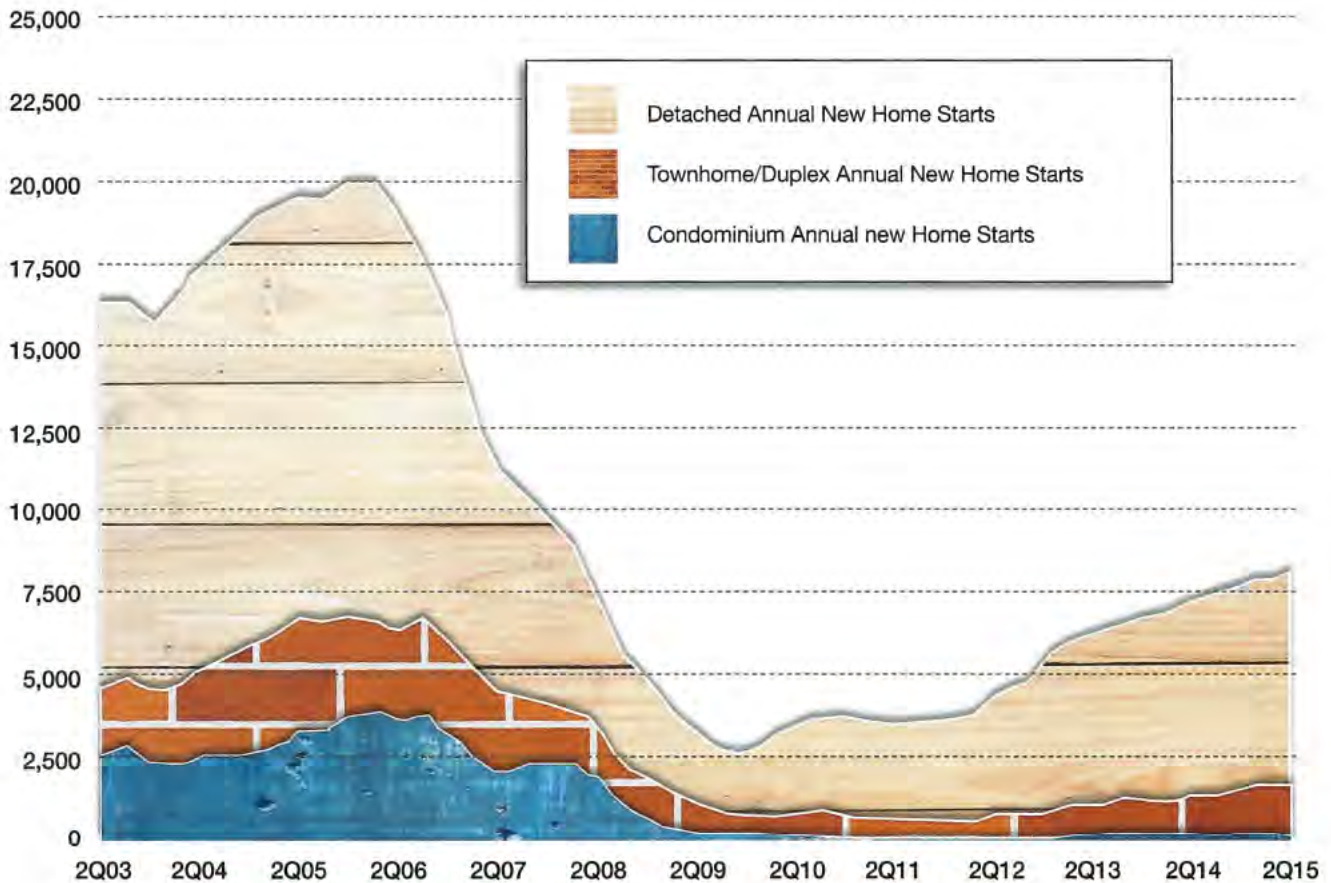
When the HOA pushed legislators to pass SB 177 in the last legislative session, it presented a more unified voice than just builders calling for reform. Though the bill died in committee, the momentum then swung to the cities.

And the proposed legislation directly rebutted opponents' arguments that the reason there's such a dearth of condo construction is because there's lack of demand.



ATTAINABLE HOUSING PROBLEM
W O R S E N S





“In terms of choosing our strategy and taking a step back and having our involvement at the state Capitol, this year it came in the form of a member of the HOA,” said David McLain, chairman of the CAHB’s Construction Defects Task Force. “That really changed the dialogue. For years and years, the issues defined as construction defects came down to a fight between home builders and those who represented us, and homeowners and those who represented them. They looked to frame the discussion as builders were just trying to cover shoddy construction. It was hard for us to get any traction that way.” By joining the coalition, the target came off the home builders’ back and was properly placed instead on the inability of the market to provide attainable housing, McClain said.

The coalition maintained that reform was needed to provide more affordable homeownership opportunities. Multi-family rents have soared to double-digit, year-over-year increases, while available inventory remains below 5 percent, according to the Apartment Association of Metro Denver. That paints a picture of an extremely tight market.

Lack of Condos Available for Sale Hurting Housing Market

“We’ve seen more (condo) transactions, more people moving here, more demand and a good economy,” said Metrostudy’s John Covert, director of the Colorado region. “That’s all well and good, but we’re at a time when we’re building little to no new condo product. The stats are eye-opening.”

A quick look at the data shows condo construction is abysmally low, compared to

previous metro Denver real estate cycles. In Q1 2015, the latest available, condo construction comprised only 3.4 percent of 8,152 new housing starts, according to Metrostudy. The Hanley Wood company is the market leader for research and statistics on residential real estate development and new-home construction.

In the area’s last up-cycle, which came in Q2 of 2006, condo construction accounted for 20.3 percent of the 18,911 new home starts in metro Denver.

Covert said condo prices have skyrocketed in recent years because of lack of supply.

“It’s not a demand issue,” Covert said. “It’s clearly a supply issue.”

That information was easy to present to the public and legislators through the HOA, Clark said.

“There are economists hired by trial lawyers that claim it’s nothing but a mar-

ket problem, that condos will eventually come in,” Clark said. “Well we agree it’s a market problem. But that problem was caused by the changed law in 2010” that made it easier to bring construction-defects lawsuits against developers.

“By joining the coalition, the proponents came under a much bigger tent,” said McLain, founding partner of Higgins, Hopkins, McLain & Roswell, LLC., and a Colorado construction litigation specialist. “The conversation changed from homeowner versus home builder to one of affordable/attainable housing. Then we were with everyone that was involved or interested in affordable/attainable housing.”

City Ordinances Might Not Be Enough

Though the cities passing their own ordinances is an encouraging sign, it might not trigger enough new condo construction.

There’s concern that local jurisdictions might have no standing to create such laws, and it’s a state law issue, McLain said.

“If it became the law of the land across the state, it’d be more convenient,” he said.

Many are also watching the appeal before the Colorado Supreme Court.

“Don’t expect to see any pioneering legislation that has any chance of passing this upcoming legislative session,” Clark said. “Many legislators are positioning themselves for re-election.”

McLain added: “We’re going to hold down a defensive position at the next session. For example, if there are any new bills floated by the plaintiffs if the Supreme Court upholds the Appellate Court ruling.”

But that doesn’t mean the CAHB or the HOA are sitting idly by.

“We’re waiting to see what the Supreme Court will do, but we’re also keeping up the drum beat and working with local com-

munities trying to pass ordinances,” Clark said. “We want to keep construction defects (litigation reform) in front of people. The news just gets worse and worse for affordable-housing availability.”

Clark added that if any communities outside the Front Range are looking for help urging local elected officials to pass construction defect reform measures, the HOA can help.

“The home builders have great stories to tell about projects they’ve tried to go forward with,” Clark said. “But the challenges come with the required insurance that makes it possible for them to remedy complaints some condo owners have. They can call their local legislators or go to their office – they’re around before the session starts. You can also invite us to a meeting of local folks who deal with public policy in your area. We just don’t want to come across as whiners and complainers.” ■■