



LEGISLATION, LAWSUITS, AND MARKETS

In the Rocky Mountain Region, States That Empower Defect Litigation Stall Housing Affordability

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A healthy state economy depends not only on the addition of luxury developments and large-scale infrastructure, but also on the availability of entry-level and move-up ownership housing. Affordability is not merely about rent; it is also about enabling workers, young families, and mid-career professionals to buy homes—especially attached housing like condominiums and townhomes—that provide an attainable stepping stone. Yet, in the Rocky Mountain region, the viability of that “middle rung” of the housing ladder is being shaped less by land cost or zoning than by a state’s construction-defect liability framework.

On one hand, states that protect builders’ exposure and give insurers and lenders confidence are seeing stronger housing supply and broader economic momentum. On the other hand, states like Colorado face stalled ownership housing and, arguably, slower growth due to the ever-loomng risk of defect litigation.

This article reviews four states: Utah, Colorado, Idaho, and Montana, and examines how their defect laws correlate with for-sale multi-family building activity and economic health. Utah and Idaho, both among the top-10 states for net in-migration in 2024, nearly doubled Colorado’s population growth, suggesting that housing policy and economic vitality are linked.

The implication for carriers and claims managers is clear: Liability reform can matter not only to litigation exposure, but also to the amplitude of build and risk volume.

Utah: Reform, Builder Confidence, and Migration Momentum

Utah now stands as the benchmark in the region for rebuilding confidence in for-sale attached housing. In 2025, the Legislature enacted Utah Code § 78B-4-513, which limits most defective-construction actions to contract or warranty claims (tort is generally restricted to other-property damage or bodily injury); requires pre-suit notice and opportunity to repair; and emphasizes contract privity.

That structure gives builders and insurers clearer boundaries of exposure, freeing finance and underwriting to re-engage in condominium and townhome production. This matters because Utah’s economy and population are growing. From July 2022 to July 2023, Utah’s population grew 1.6%, with roughly 56% of that increase coming from net migration, according to the Kem C. Gardner Policy Institute. Net in-migration remained a principal driver of growth into 2024.

For carriers, that means insureds building for-sale attached units in Utah are operating in a jurisdiction where:

- Liability boundaries are tighter.
- Supply-demand fundamentals are strong.
- Workload is likely more predictable.

Idaho: Steady Demand, Standard Liability Framework

Idaho has not passed a major new defect law over-

haul like Utah or Colorado, but it benefits from strong in-migration and a more stable builder risk environment. Recent reports show Idaho's net migration ranking among the highest in the nation in 2024, with an estimated 3.4% domestic in-migration rate. While for-sale condo/townhome data are less granular statewide, classic proxies (townhome shares, building permits) suggest ownership housing remains pressed by demand (See *CRE Daily*, 2025; Idaho Division of Financial Management, 2024; and Builders Patch, 2025).

For carriers, Idaho may not offer a novel legal windfall, but its mid-market build volumes remain favorable, and defect exposure remains less volatile than in jurisdictions with active litigation dynamics, like Colorado.

Montana: Affordability Challenges Outweigh Liability Reform

Montana maintains a notice-and-repair regime for residential construction-defect claims but lacks targeted reforms aimed at reducing builder exposure for for-sale attached product. (See Mont. Code Ann. § 70-19-427, 2024). The state's housing ladder appears under strain: By some measures, Montana has become among the least affordable states in the nation for homebuyers, not because of risk of defect litigation, but due to the post-Covid "Zoom boom" and an imbalance of supply and demand, as reported by *The Missoula Current*.

For carriers, this suggests slower growth of entry and move-up ownership product, and even though the liability framework is reasonable, the market demand and affordability dynamics are weaker.

Colorado: Reform Stalled Due to Plaintiffs' Attorneys' Sway

Colorado presents a contrasting case from the other states in the Rocky Mountain region. For well over a decade, the for-sale condominium share in the Denver metro and Front Range market collapsed, from around 34% of multi-family starts in 2002–08 down to about 3% in 2022. Industry commentary points to construction claim risk, insurance cost, and defect litigation shadow as key

deterrents (See Common Sense Institute, "The Decline of Condominium Construction in Colorado," September 2023).

In May 2025, the Legislature passed Colorado House Bill 25-1272, creating a voluntary for-sale Multi-Family Construction Incentive Program that offers builders reduced litigation exposure in exchange for structured participation, but contains fee-shifting provisions that can increase builders' risk of paying plaintiffs' attorney fees in certain circumstances. The program, nevertheless, remains optional and proceeds amid caution, as reported by *The Colorado Sun* in February 2025.

From a carrier vantage, Colorado remains a high-risk venue for condominiums and townhomes. The risk landscape will only shift with sustained legislative attention to balancing attainable-housing needs against the incentives that sustain excessive construction-defect litigation. Until then, Colorado will continue to become less affordable, and the entry-level and move-up ownership housing market will all but disappear.

Law Helps, but Markets Decide

While builder-friendly liability frameworks appear to help enable the housing ladder, they do not guarantee affordability in isolation, as shown in the discussion regarding Montana. Affordability remains sensitive to market forces such as migration, labor availability, material costs, and income growth. In short, although it is not a wholly sufficient condition, litigation reform is a necessary step toward attainable housing and a stronger Colorado economy, and, luckily, it is one of the few levers directly within a state's control.

Across the four states analyzed, a pattern emerges:

- Where liability reform is specific, builder-friendly, and finance-aligned (Utah), for-sale ownership housing gains momentum, supporting broader economic growth (migration, job creation, housing ladder mobility).
- Where reform is optional or still not enough to entice multi-family construction (Colorado), builder hesitancy persists, and the housing ladder

remains incomplete at the entry level.

- Where demand remains strong, but reforms are modest (Idaho), owner-occupied attached housing can still succeed, but carriers should still apply underwriting rigor.
- Where affordability and build-economics are more challenged (Montana), the legal environment is less the primary barrier; market factors dominate.

For carrier decision-makers working in the Rocky Mountain region, this suggests three actionable takeaways:

1. States with clearer builder protections reduce claim volume uncertainty and may merit underwriting or volume strategy emphasis. Utah stands out.
2. Build-pipeline volume drives claim opportunity. Where for-sale ownership housing expands, so do upstream defects, warranty exposures, and coverage claims. Carriers should align panel defense and insurer engagement accordingly.
3. Do not treat defect law as abstract; it is a driver of underwriting, volume, and exposure. A state that encourages builder participation and provides insurer clarity supports a stronger housing ladder, stronger economy, and potentially lower unit-risk per project.

In a thriving economy, every rung of the housing ladder matters, from entry-level condominiums to move-up townhomes, starter single-family homes, and luxury residences. For the Rocky Mountain market, this means focusing not only on building more walls, but also on building better risk frameworks for those walls. Carriers that recognize and align with states that balance homeowner protection with builder certainty will not only see better claims outcomes, but they will also see better markets. ■

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