

ORDINANCE NO. O-025-XXX

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

**AN ORDINANCE GOVERNING CONSTRUCTION DEFECT LITIGATION IN
DOUGLAS COUNTY, COLORADO**

WHEREAS, the Board of County Commissioners of the County of Douglas, Colorado, (“Board”) is authorized to enact this Ordinance pursuant to C.R.S. § 30-11-101(2), to provide for public health, safety, and welfare.

WHEREAS, the Board recognizes new home construction is essential to provide for health, safety, and welfare of Douglas County residents and our local County economy. Homeownership is a necessary element of personal stability, economic planning, and wealth creation. In addition, a diverse housing stock allows families and the aging to find the right size home for their changing needs.

WHEREAS, the Board recognizes there are impediments to new home construction, including the burden of construction defect litigation and the unintended use of Douglas County laws and regulations in such litigation.

WHEREAS, the Board adopts this Ordinance to:

- Encourage the construction of owner-occupied developments to promote first-time and right-size homeownership;
- Facilitate the implementation of the County’s Comprehensive Master Plan;
- Insure home builders remain responsible for quality home construction in the County;
- Provide for swift and voluntary remediation of actual construction defects;
- Compliance with county building, zoning, and planning requirements;
- Provide homeowners in communities with homeowners’ associations with the opportunity to participate in the governance of their community by authorizing individual owners to give or withhold their informed consent with respect to actions the board of the homeowner’s association may desire to pursue regarding construction defects.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO, THAT:

PART I: Written Notice of Claim to the County

- (A.) Construction defects may impose a public safety concern to which the County should be made aware.
- (B.) Where non-compliance with any County regulation or negligence related to the performance of any work subject to a County regulation is the cause for legal

action to assert a claim of damages arising from a construction defect, the claimant in such action shall provide written notice to the County.

(1) Such written notice shall:

- (a) Be sent certified mail;
- (b) Provide the claimant(s) name, address, and method of contact;
- (c) To the best of claimants' knowledge, identify and location any alleged construction defects; and
- (d) To the best of claimants' knowledge, the parties responsible for any alleged construction defect.

(C.) Upon receipt of written notice of an alleged construction defect claim, the County shall have the right to inspect any alleged defect to ensure habitability and occupant safety. Any report created as part of such an inspection shall become public record. The County's right to inspect shall include a right of entry. The County bears all costs associated with the inspection, including the production costs of any documents requested from the claimant. Any inspection of property shall be reasonably scheduled to a mutually agreed upon date to not interfere with the property owner's enjoyment of the property. Any inspection of property shall be reasonably scheduled within 21 days of the County's receipt of claimant's written notice.

PART II: Homeowner Consent

Section 1. Homeowner Association Consent

(A.) Homeowners in communities with homeowners' associations are entitled to be kept informed by boards of their homeowners' associations of the board's consideration of actions regarding construction defects and to have meaningful input and a right to make a considered judgment and give or withhold informed consent. Accordingly, if a board of a homeowners' association considers or intends to institute an action asserting one (1) or more construction defects, the board must do each of the following:

- (1) At least sixty (60) days before filing any action under C.R.S. § 13-20-803.5, the claimant must mail or deliver written notice to each homeowner at the homeowner's last known address.
- (2) The notice must be signed by a person other than, and not employed or otherwise affiliated with, the attorney or law firm that represents or will represent the association in the construction defects claim.

(B.) The notice required by this section must contain the following information:

- (1) The nature of the action and the relief sought.

- (2) A good faith estimate of the amount of expenses and fees the board anticipates will be incurred, directly or indirectly, in prosecuting the action, including attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which it may be liable if it is not the prevailing party or if it does not proceed with the action.
 - (3) A good faith cost estimate of repairing the construction defect, or if the construction defect is not repaired, the estimated reduction in value of the unit.
 - (4) The estimated impact on the marketability of units that are not the subject of the action, including any impact on the ability of the owners to refinance their property during and after the action.
 - (5) The manner in which the association proposes to fund the cost of the action, including any proposed special assessments or the use of any revenues.
 - (6) The anticipated duration of the action and the likelihood of success.
 - (7) A copy of any notice claim that was sent to any builder pursuant to this Ordinance.
 - (8) Whether the builder has offered to make any repairs and, if so, whether the builder has made repairs.
 - (9) The steps taken by the builder in accordance with this Ordinance to address the alleged construction defect, including any acknowledgement, inspection, election to repair or repairs.
- (C.) The homeowners' association may not commence the action unless the board obtains the written consent of homeowners holding a simple majority of the total voting rights in the association after giving the notice required by this Ordinance. Homeowners may vote either directly or through a written ballot signed by the homeowner. Such consent must be obtained within sixty (60) days after such notice is provided, otherwise the homeowners shall be deemed to have declined to provide their informed consent to such action.
- (1) During the voting period, any builder or defendant has the right to communicate in any non-threatening or intimidating manner with the homeowners regarding the alleged construction defects, its right to repair, and any proposed legal action.

Section 2. ALTERNATIVE DISPUTE RESOLUTION PROVISIONS

- (A.) If a provision found in the declaration, bylaws or rules and regulations of a common interest community requires that construction defect claims be submitted

to mediation or arbitration, that requirement constitutes a commitment on the part of the unit owners and the association upon which a developer, contractor, architect, builder, or other person involved in the construction of the community is entitled to rely. Consequently, a subsequent amendment to the declaration, bylaws or rules and regulations that removes or amends the mediation or arbitration requirement shall not be effective with regard to any construction defect claim that is based on an alleged act or omission that predates that amendment.

PART III: Home Builder Rights

Section 1. Right to Inspect

- (A.) Where non-compliance with any County regulation or negligence related to the performance of any work subject to a County regulation is the cause for legal action to assert a claim of damages arising from a construction defect, the claimant in such action shall provide written notice to any defendant in such action.
 - (1) A builder or defendant who receives a notice shall acknowledge receipt of the notice in writing, within fourteen (14) days after receipt. The acknowledgement shall be sent to the claimant or claimant's attorney where claimant has identified the claimant is represented by counsel in the received notice. The Colorado Rules of Professional Conduct shall be adhered to regarding communication between parties represented by legal counsel.
 - (2) Where a builder or defendant who receives a notice fails to acknowledge receipt of the notice in writing, within fourteen (14) days, this Ordinance shall not apply to the noticed legal action.
- (B.) Upon receipt of written notice of an alleged construction defect claim, a builder or defendant shall have the right to inspect any alleged defect, including the use of third-party or retained experts.
- (C.) The builder or defendant's right to inspect shall include a right of entry.
- (D.) The claimant property owner may request and require a builder or defendant produce proof or liability insurance before permitting a scheduled inspection.
- (E.) The builder or defendant bears all costs associated with the inspection, including the production costs of any documents requested from the claimant.
- (F.) Any inspection of property shall be reasonably scheduled to a mutually agreed upon date to not interfere with the property owner's enjoyment of the property.

Any inspection of property shall be reasonably scheduled within 21 days of receipt of claimant's written notice to the county or builder or defendant.

- (1) If a builder defendant fails to request an inspection within 21 days of receiving a written notice of claim, the claimant is release from any duty to cooperate with an inspection under this Ordinance.
- (G.) A claimant shall cooperate with any inspection, including the production of any documents related to claimant's notice of claim requested by the builder or defendant within 21 days of date of the scheduled inspection.
- (H.) Nothing in this Ordinance shall alter or diminish a claimant, defendant, or other parties' duties or rights under Colorado law, including the Colorado Rules of Civil Procedure or Evidence.
 - (1) Nothing that occurs during a builder's inspection may be used or introduced as evidence to support a defense of spoliation of evidence by any potential party in subsequent litigation.
 - (2) A builder or defendant may waive their right to inspect.
 - (3) A builder or defendant's right to inspect shall not toll or impede litigation in the related legal action.

Section 2. Right to Repair

- (A.) Within thirty (30) days of the schedule inspection or within fourteen (14) days of builder or defendant's acknowledgment of the notice of claim, whichever is later, the builder or defendant may elect to repair the construction defect by providing a notice of such intent in writing to the claimant(s).
 - (1) If the builder elects to repair the construction defect, it has the right to do so and the claimant may not, directly or indirectly, impair, impede, or prohibit the builder from making repairs.
 - (2) Any notice to repair shall offer to compensate the claimant for all applicable expenses, if any, incurred by the claimant within the timeframe set for repair, such as, without limitation, expenses for lodging if the repair requires the claimant to vacate his/her residence.
 - (3) Any notice of repair shall be accompanied by a detailed, step-by-step explanation of the particular construction defect being repaired and setting forth a reasonable completion date for the repair work notice shall also include the contact information for any contractors the builder intends to employ for the repairs.

- (4) Claimant shall promptly cooperate with builder to schedule repair work by builder.
- (5) If the builder notifies the claimant in writing at least five (5) days before the stated completion date that the repair work will not be completed by the completion date, the builder shall be entitled to one (1) reasonable extension of the completion date, not to exceed twenty (20) days.
- (B.) Within ten (10) days after receipt of the builder's notice to repair, a claimant may deliver to the builder a written objection to the proposed repair if the claimant believes in good faith that the proposed repairs will not remedy the alleged construction defect or fails compensate the claimant for all applicable expenses. The builder may elect to modify the proposal, in whole or in part, in accordance with the claimant's objection, and proceed with the modified scope of work, or may proceed with the scope of work set forth in the original proposal.
- (C.) A builder or defendant may offer to pay, or the claimant may offer to accept, a sum certain to settle the claim. The settlement offer may also include payment of a sum certain to settle any future claims of construction defects that may be discovered after the date of payment of the monetary settlement. Neither a builder, nor a claimant, is obligated to make or accept settlement by payment of a sum certain. If an offer of settlement by payment of a sum certain is made, it shall be accepted by written notice to the party making the offer no later than fifteen (15) days after receipt of the offer or such longer period, if any, stated in the offer as the time for acceptance. If the offer is not accepted within the fifteen (15) day period (or such longer period, if any, stated in the offer as the time for acceptance), it shall be deemed to have been rejected. If an offer to settle is accepted, the monetary settlement shall be paid in accordance with the offer and such payment shall be in full settlement and release of all claims with respect to or arising out of the alleged construction defect(s). Upon such settlement, either party may record in the public records maintained by the clerk and recorder of the county in which the property is located a copy of the settlement offer and acceptance or a notice of the alleged construction defect(s) and the settlement thereof, which shall provide notice to persons that thereafter acquire any interest in the property that all claims with respect to or arising out of the alleged construction defect(s) have been settled. If the builder or defendant fails to make the payment in accordance with the accepted offer, the claimant shall be released from the requirements of this Ordinance and may proceed with the filing of an action against the builder or defendant for the claim arising out of the alleged construction defect(s) and all other claims without limitation imposed by this Ordinance.
- (D.) If the builder and defendant fails to send a notice to repair or otherwise strictly comply with this Ordinance within the specified time frames, or if the builder or defendant does not complete the repairs within the time set forth in the notice to

repair, the claimant shall be released from the requirements of this Ordinance and may proceed with the filing of an action against the builder.

- (E.) Completion of repairs. The builder or defendant shall notify the claimant when repairs have been completed. The claimant shall have ten (10) days following the completion date to have the premises inspected to verify that the repairs are complete and satisfactorily resolved the alleged construction defects. A claimant who believes in good faith that the repairs made do not resolve the construction defects may proceed with the filing of an action.
 - (1) All repair work performed under this Ordinance shall create a new 2-year warranty on such work.
 - (2) Repair work performed under this Ordinance shall not amend or impair any existing warranties.
- (F.) A builder or defendant may waive their right to repair.
- (G.) If a builder or defendant elects to repair an identified construction defect, the State statute of limitations and repose for a construction defect claim shall be tolled during the period of repair and extended sixty (60) days.
- (H.) Any alleged construction defect discovered after repairs have been completed shall be considered a unique claim subject to the requirements of this Ordinance.

PART IV: Construction Defect Litigation

Section 1. No Strict Liability

- (A.) The intent of Douglas County's laws and regulations regarding construction and land use is to provide for and administer safe construction and approved land use in the County. The intent of Douglas County's laws and regulations regarding construction and land use is not to create a private or civil right of action.
- (B.) A violation of any County law or regulation regarding construction or land use or a failure to substantially comply with any such law or regulation shall not create a private cause or action. A violation of any County law or regulation regarding construction or land use, or a failure to substantially comply with any such law or regulation may not be used to support or prove any construction defect claim, regardless of the statutory or common law theory under which the claim is asserted, including strict liability or negligence *per se* unless the violation or failure to substantially comply results in one or more of the following:
 - (1) Actual damage to real or personal property,
 - (2) Actual loss of the use of real or personal property;

- (3) Bodily injury or wrongful death; or
- (4) A risk of bodily injury or death to, or a threat to the life, health, or safety of, the occupants of residential real property.
- (C.) Under the conditions described in Part IV, Section 1(B)(1)-(4) of this Ordinance, application of Douglas County laws and regulations concerning construction and land use to support a claimant's claim for relief shall be limited to the recovery of economic damages.

PART IV. Ordinance Application

- (A.) This Ordinance applies only to new multi-unit or dwelling construction commenced under a building permit issued by the County after the effective date of this ordinance.
- (B.) The County may require reference to Ordinance in a plat as a condition of subdivision approval.
- (C.) A builder, developer, or owner of a property on which a home is constructed shall reference to this Ordinance in any contract for the sale of any residential property sold after the effective date of this Ordinance.

PART V. DEFINITIONS

For the purpose of this Ordinance, the following words or phrases shall have the following meaning:

- (A.) **BUILDER:** A construction professional as defined by C.R.S. §13-20-802.5(4).
- (B.) **CLAIMANT:** Claimant as defined by C.R.S. §13-20-802.5(3).
- (C.) **COMMON INTEREST COMMUNITY:** Real estate described in a declaration with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvements of other real estate described in a declaration.
- (D.) **CONSTRUCTION DEFECT:** Any defect: (1) arising from the design, construction, or supervision of an improvement to real property; or (2) causing physical damage or loss of use of property.
- (E.) **HOMEOWNER:** A residential property owner regardless of the term of ownership or type of residential property.

(F.) **HOMEOWNERS' ASSOCIATION:** A property owners' association formed to represent the interest of homeowners in a common interest community.

(G.) **LEGAL ACTION:** Action as defined by C.R.S. §13-20-802.5(1).

PART V. ADMINISTRATION

Section 1. Severability

Should any section, clause, sentence, or part of this Ordinance be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, the same shall not affect, impair, or invalidate the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

Section 2. Safety Clause

The Board of County Commissioners hereby finds, determines, and declares that this Ordinance is necessary for the preservation of public welfare, health and safety.

Section 3. Repeal

This Ordinance is intended to be applied in conjunction with other applicable laws, not repeal or supersede other applicable laws. This Ordinance repeals and supersedes only those parts of any other Douglas County ordinance that expressly contradicts and directly prohibits the application and enforcement of this Ordinance. In application of this Section, this Ordinance and all related ordinances shall be narrowly construed in their application.

Section 4. Adoption and Passage of this Ordinance

Pursuant to C.R.S. §§ 30-15-405 and 406, County ordinances are typically presented for review and comment on First Reading at a Board of County Commissioners Business Meeting. Subsequently, after notice has been provided in the newspaper, the Board of County Commissioners will adopt an ordinance at Second and Final Reading, which is conducted at a public hearing. If adopted as an “emergency ordinance,” the ordinance will take effect immediately. Otherwise, all ordinances go into effect 30 days after publication after Second and Final Reading.

CERTIFICATION

The Douglas County Clerk shall certify the passage of this ordinance and shall have on file copies of this ordinance available for inspection by the public during regular business hours.

INTRODUCED AND READ ON FIRST READING on XXX XX, 2025, and ordered published in the DOUGLAS COUNTY NEWS-PRESS.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO

By: _____
Abe Laydon, Chair

ATTEST:

Deputy Clerk

ADOPTED ON SECOND AND FINAL READING on XXX XX, 2025, and ordered published by reference to title only in the DOUGLAS COUNTY NEWS-PRESS.

THE BOARD OF COMMISSIONERS OF THE COUNTY OF DOUGLAS, COLORADO

By: _____
Abe Laydon, Chair

ATTEST:

Deputy Clerk

CERTIFICATE

I hereby certify that the foregoing Ordinance No. O-025-XXX was introduced and read on First Reading at the regular meeting of the Board of County Commissions of the County of Douglas on XXX XX, 2025, and the same was published in full in the Douglas County News-Press, a newspaper of general circulation published in Douglas County, on XXX XX, 2025, and thereafter was adopted on Second and Final Reading at a regular public hearing of the Board of County Commissioners of the County of Douglas on XXX XX, 2025. Said ordinance was published by reference to title only on XXX XX, 2025. Said ordinance shall become effective as of XXX XX, 2025.

Deputy Clerk

State of Colorado)
)ss.
County of Douglas)

Subscribed and sworn to before me this _____ day of _____, 2025, by
_____, Deputy Clerk.

Notary Public

My commission expires: _____

CERTIFICATION

I, _____, Douglas County Deputy Clerk, do hereby certify that the foregoing Ordinance No. O-025-XXX, entitled, **AN ORDINANCE GOVERNING CONSTRUCTION DEFECT LITIGATION IN DOUGLAS COUNTY, COLORADO** is a true, correct and complete copy from the records in my office, that said ordinance was duly adopted by the Board of County Commissioners of Douglas County and is in full force and effect.

Deputy Clerk