

## Construction Liability

### 1 **The proposed amendment to the Colorado Constitution:**

2 with some exceptions, prohibits limits, including limiting damages for pain and  
3 suffering to \$250,000, on a property owner's ability to recover damages when  
4 improvements to property are not constructed in a "good and workmanlike  
5 manner"; and

6 defines an improvement constructed in a "good and workmanlike manner" as  
7 an improvement that is suitable for its intended purposes.

### 8 **Background**

9 Currently, state law establishes a procedure to recover damages from a construction  
10 professional when construction is defective. Under this law, a property owner may sue the  
11 responsible construction professional after giving notice and providing an opportunity to  
12 fix the defect. Construction professionals include architects, contractors, developers, and  
13 others involved in the construction business. If an agreement to fix the defect is not  
14 reached within 75 days in the case of residential property, or 90 days in the case of  
15 commercial property, the property owner may sue the construction professional responsible  
16 for the defect.

17 A property owner who sues, and wins, may be reimbursed for the lesser of the  
18 following three dollar amounts: 1) the value of the property without the defect, 2) the cost  
19 to replace the property, or 3) the reasonable cost to repair the defect. Medical expenses  
20 resulting from an injury are fully reimbursable. Awards for "pain and suffering" for bodily  
21 and personal injury are capped at \$250,000. In addition, if the owner can show that the  
22 construction professional knowingly violated the law that protects consumers from fraud,  
23 he or she may be awarded up to an additional \$250,000. Damage awards may also include  
24 the costs associated with moving, interest, or legal fees. Under this law, a lawsuit must be  
25 filed within two years from the date of discovering the defect or six years from the date the  
26 construction occurred.

27 *The proposal.* This proposal creates a new section in the state constitution that  
28 repeals current law. It removes limitations on the amount of money a property owner can  
29 collect in damages, except for punitive damages and lawsuits against governments. It also  
30 sets in the state constitution the current time frames for filing a lawsuit. Finally, the  
31 proposal eliminates the current requirement that a property owner and construction  
32 professional try to resolve the problem before bringing a lawsuit. In addition to these  
33 changes to current law, the proposal restricts the types of laws the legislature can pass in  
34 the future concerning construction liability.

1     **Arguments For**

2             1) The proposal protects property owners by ensuring they can be fully  
3 compensated for faulty construction. For the past three years, property owners have been  
4 limited in their ability to recover damages. Damages will be determined on a case-by-case  
5 basis in a court of law, rather than through a formula that treats all property owners the  
6 same. Property owners will be eligible for compensation for the pain and suffering caused  
7 by a defect.

8             2) The proposal changes a system that favors construction professionals at the  
9 expense of property owners. Individual property owners do not have the necessary time  
10 or resources to effectively negotiate with construction professionals or corporations that  
11 may be responsible. It creates constitutional standards that safeguard property owners from  
12 laws that limit their ability to collect damages.

13     **Arguments Against**

14             1) The proposal will drive up the cost of housing. An increase in the number of  
15 lawsuits, and the awards that result from those lawsuits, could make insurance costs  
16 prohibitive. In addition to construction professionals, this proposal allows for lawsuits  
17 against anyone who makes improvements to property, not just construction professionals.  
18 The proposal creates a fundamental change in liability to include construction professionals  
19 and non-professionals alike.

20             2) A process already exists for property owners and construction professionals to  
21 resolve construction defect disputes without immediately turning to the courts. The current  
22 system also defines damages in a way that is fair to both property owners and construction  
23 professionals: it compensates property owners for the actual cost of fixing their property  
24 but limits excessive compensation.

25     **Estimate of Fiscal Impact**

26             This proposal may affect the time devoted to construction-related cases by  
27 Colorado courts. If the proposal increases the incentive for property owners to pursue  
28 claims, the caseload and the time spent per case may increase. On the other hand, if it  
29 increases the incentive for construction professionals to either increase construction quality  
30 or settle claims out of court, the time devoted to construction-related cases may decrease.  
31 Ultimately, the effect of the proposal on the courts will depend on the number of claims  
32 filed, the portion of those claims settled out of court, and the time devoted to each case that  
33 goes to trial.