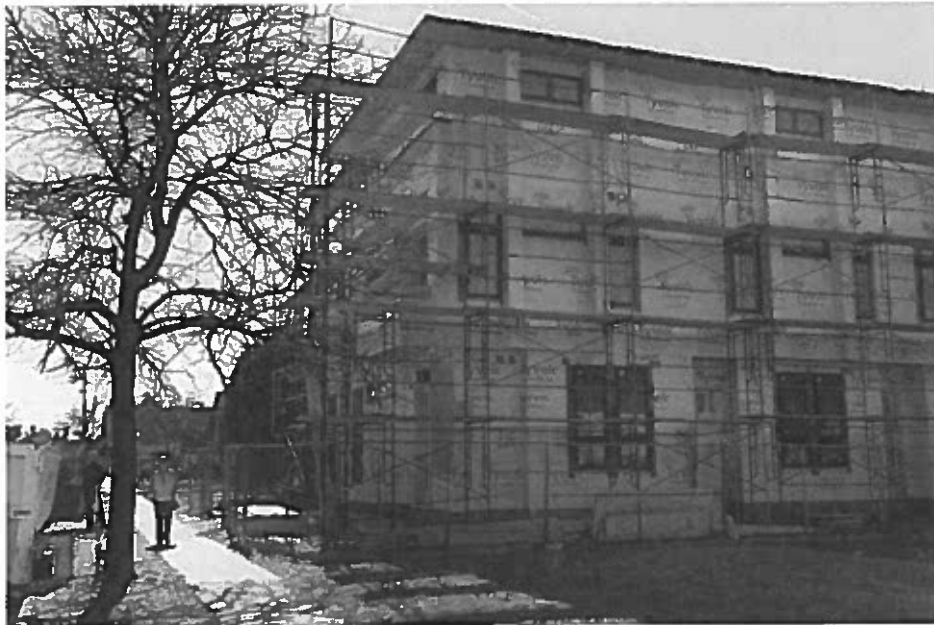


BUSINESS

Measure to spur condo construction finally passes, but it's not "a magic bullet"

Bill that eases builders' legal burden for construction defects helps, but immediate building boom unlikely



Kathryn Scott, Denver Post file

Apartments under construction in Littleton in March 2017.

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Now that state lawmakers have passed the first measure in years to abate construction-related lawsuits against condo builders, new developments should start sprouting across the metro area like so many spring flowers.

Right?

Not so fast, says Home Builders Association of Denver CEO Jeff Whiton.

House Bill 1279, which stipulates that legal action against a builder for alleged construction flaws can only proceed when more than half of all homeowners in a condominium complex agree to it, is "not the cure-all" for what has become an anemic number of condo starts in Colorado.

More needs to be done to reduce the number of lawsuits filed against condo builders, which he said drive up insurance rates and chase developers from the state.

"The job's not done yet," Whiton said. "There's still plenty of heavy lifting to do to give builders confidence to build condominiums and not be harassed by lawsuits."

HB 1279 passed the Colorado Senate on Thursday morning and will land on Gov. John Hickenlooper's desk for his signature in the coming days. The governor came out strongly in support of the bill last month.

Whiton said other issues not addressed in the legislation, like the high cost of insurance for builders and what role binding arbitration will play in dispute resolution, still need to be addressed before a healthy condo market can re-establish itself in the state. He compared the passage of the homeowner consent bill to winning the first game in a seven-game championship series.

"I would expect that there is going to be a lot of pressure to make more changes," he said.

Suzanne Leff, a delegate to the Community Association Institute's legislative action committee, agreed that HB 1279 will have only so much power to bolster Colorado's new condo market. But, she contends, that's because the construction industry's claim of excessive defects litigation is overblown.

"There are so many factors at play that (litigation) is not the only thing," she said.

She cited labor shortages and local building impact fees charged by cities and towns as a part of the condo slowdown as well. Condos represent around 3 percent of all housing starts in metro Denver as compared to 1 in 5 starts a decade ago.

According to a December report commissioned by the State Court Administrator's Office, roughly 200 construction defects lawsuits are brought annually against builders in Colorado, a number extrapolated from a three-month periods in both 2013 and 2014.

Leff said stopping a homeowner from seeking redress in court for shoddy work, like a sagging foundation or leaky windows, is a nonstarter for her organization, which has been at the forefront of fighting reform bills during the last several legislative sessions. That opposition helped scuttle a bill this year that would have mandated binding arbitration over litigation when it comes to construction defects disputes.

"We don't want the legislature to take away the rights of homeowners to a jury trial," Leff said.

Kyle Zeppelin, a developer whose company has done a lot of work in Denver's River North neighborhood, said HB 1279 actually does his industry a favor.

By putting litigation decisions over workmanship in the hands of a development's unit owners — rather than just its homeowner association board — the bill ends the tendency of those boards to "wall off" homeowners from developers.

"It's a toxic dynamic between these boards and these predatory attorneys," he said, referring to the trial attorneys that specialize in construction defects cases.

Also, if homeowners learn that their unit might be harder to sell or refinance if it is caught up in litigation, they might be less likely to take a builder to court.

"It's not perfect," Zeppelin said of the bill, "but it really starts to address what is a major problem."

Affordable-housing advocates, like Housing Colorado's executive director Sara Reynolds, said the builders she talks to think HB 1279 could help bring down the cost of insurance for multifamily projects and prompt more affordable housing stock to be built. Margins are so thin at lower price points that builders of affordable product find it hard to move ahead with projects in the current environment.

"Once we see an insurance adjustment on the affordable side, we'll see development ramp up," Reynolds said. "But it's going to take some time."

In Lakewood, which in 2014 became the first Colorado city to pass a construction defects ordinance to spur condo construction, the industry is already starting to thaw. A developer has gone through the pre-application process for a condo project, said Mayor Adam Paul, but has yet to submit an application.