

# UNPACKING COLORADO'S CONSTRUCTION DEFECTS: Why Liability Insurance for Developers is Costly and Scarce

## THE PROBLEM:

### Colorado's "Litigation First" Culture

- **The Root Cause of the Housing Crisis:** The primary reason for the lack of affordable for-sale housing is not a lack of demand or available land, but a legal environment that incentivizes frivolous construction defect lawsuits. These lawsuits, driven by trial attorneys, force builders to abandon entry-level housing projects, such as condos and townhomes, because the financial and legal risks are too high.
- **A "Worst-in-the-Nation" Environment:** Underwriters consider Colorado the worst state for construction defect risk. This has caused major insurance companies to exit the market, making general liability insurance for for-sale properties 4-5 times more expensive than for rental properties.

## THE SOLUTIONS:

### From Policy to Practice



**State-Level Action:** The most effective solution is a true "right to repair." This would require homeowners to allow a developer a reasonable opportunity to fix a legitimate defect before litigation can be pursued. This single policy change would reduce legal costs, lower insurance premiums, and encourage the construction of more affordable for-sale homes. It would also help to counter the undue influence that attorneys have on HOA boards.



**Local-Level Action:** For instance, some municipalities have affordable housing linkage fees with different rates based on a unit's square footage or size. Similarly, fees can be calculated based on a project's valuation, which is often tied directly to its size. Additionally, improving the efficiency of the entire municipal approval process can help streamline new projects. By fostering a more collaborative and responsive environment, communities can reduce unnecessary delays, cut down on red tape, and create a predictable pathway for developers to bring much-needed projects to fruition.



Content compiled from industry leaders and subject-matter experts engaged in EDCC's Drive|Lead|Succeed Virtual Series.

## THE CONSEQUENCES:

### Costs and Lost Opportunities

- **Stifled Housing Supply:** The litigation risk has priced developers out of the affordable housing market, leading to a drastic shortage of entry-level homes and limiting opportunities for first-time buyers.
- **Economically Unviable Projects:** The rising costs of insurance, coupled with other municipal fees, are making even mission-driven affordable housing projects financially unfeasible. This crisis is not only impacting private developers but also nonprofit and public-private partnerships.
- **Loss of Competitiveness:** Colorado's regulatory and legal environment is causing developers to invest in other states instead. This directly impacts our state's ability to attract and retain talent, as a lack of affordable housing is a major barrier for new and existing workers.



**Focus on the Core Issue:** The consensus among professionals is that creative "workarounds" or new tax proposals are not the answer. The most effective path forward is to change the public policies that are preventing the market from delivering housing supply to meet demand.



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