

LAW FIRM  
OF  
JESSICA H. MILLER, LLC  
CANYON PROFESSIONAL BUILDING  
595 CANYON BOULEVARD  
BOULDER, COLORADO 80302

JESSICA H. MILLER,  
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE: 303-443-0568  
FACSIMILE: 303-443-3488

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**UNDERSTANDING COLORADO'S CONSTRUCTION DEFECT ACTION REFORM ACT**

**WHAT IS THE CONSTRUCTION DEFECT ACTION REFORM ACT?**

Colorado's Construction Defect Action Reform Act (C.R.S. § 13-20-801, *et. seq.*) ("CDARA") is a provision of Colorado law that governs all claims and litigation where a party is claiming construction defects. CDARA was passed by the Colorado General Assembly in 2001, and amended in 2003, with the intention of curbing frivolous lawsuits affecting the construction industry and limiting the liability of construction professionals after considerable lobbying by Colorado's construction and insurance industry.

**WHAT TYPE OF CLAIMS ARE COVERED BY CDARA?**

CDARA governs all actions in Colorado (including arbitration) brought against a "construction professional" that assert a claim "caused by a defect in the design or construction of an improvement to real property." Since CDARA defines "construction professionals" as "an architect, contractor, subcontractor, developer, builder, builder vendor, engineer, or inspector performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property," CDARA is not limited to only those parties actually performing physical construction, but governs claims against nearly everyone involved in the construction process.

**HOW DOES CDARA WORK?**

One of the primary components of CDARA is to require a pre-litigation Notice of Claim Process ("Process") that is aimed towards resolving defect disputes before litigation. The Process requires that any party claiming defects in construction or design must provide the construction professional with a Notice of Claim, describing any construction or design defects in reasonable detail, at least 75 days prior to filing litigation (or 90 days prior in the case of a commercial property). CDARA then requires that the construction professional be allowed to conduct a physical inspection of the claimed defects within 30 days after receipt of a Notice of Claim. After completion of the 30-day inspection period, the construction professional is afforded a period of an additional 30 days (or 45 days in the case of commercial property) to submit an optional offer to settle the claim, either by undertaking corrective work or offering payment of a sum to settle the claim, which offer must be accepted within 15 days. Should a settlement not be reached after completion of the Process, the party claiming construction defects may then proceed with litigation against the construction professional.

In the event that a party claiming construction defects fails to comply with the CDARA's Notice of Claim Process before filing litigation or arbitration, the case will be stayed until the Process is completed. In the event a construction professional fails to make an offer, fails to fulfill any settlement reached, or a settlement offer is rejected that is well below the cost to correct the defects, CDARA disqualifies the construction professional from many of the liability protections CDARA affords construction professionals.

### **HOW DOES THE NOTICE OF CLAIM PROCESS HELP RESOLUTION OF CLAIMS?**

In many instances, CDARA's Notice of Claim Process can serve as an opportunity to mediate or settle a construction defect claim in a prompt and cost-effective manner that avoids litigation. One of the advantages of the Process to both construction professionals and parties claiming construction defects is that the Process begins a dialogue between the parties about settlement and the nature, extent, and cost of the construction defects. The Process often involves additional investigation and evaluation of the defects, often by third parties or experts, which assists all parties to better understand the full scope of the defects in order to consider a settlement. Even where a defect claim is not settled, the Process can provide either side with significant information about the full extent of the defects and issues involved.

### **HOW DOES CDARA LIMIT DAMAGES AND IMPACT CONSTRUCTION DEFECT LITIGATION?**

Under CDARA, a party claiming construction defects generally may not recover more than "actual damages" in an action stemming from construction defects unless a violation of the Colorado Consumer Protection Act and other specific circumstances are present. CDARA defines actual damages as "the lesser of the: (1) fair market value of the real property without the alleged construction defect; (2) replacement cost of the real property; or (3) reasonable cost to repair the alleged construction defect, together with 'relocation costs.'" CDARA further requires that a party claiming construction defects file an initial list of construction defects in any litigation or arbitration, which may be amended if additional defects are discovered. CDARA also limits certain types of negligence claims that may be asserted in a construction defect action. In addition, CDARA includes provisions that may give parties claiming construction defects additional time to file an action to recover damages under the relevant statute of limitations if the Process is undertaken.

### **HOW DOES CDARA AFFECT MY WARRANTY?**

CDARA specifically provides that it is not intended to limit or alter the provisions of any express, written warranty provided by a construction professional, meaning that CDARA generally does not alter the rights that exist in an express warranty. CDARA also provides that a party claiming construction defects is not generally required to undertake the Notice of Claim Process when requesting "ordinary warranty service in accordance with the terms of such warranty."

### **HOW CAN CDARA HELP RESOLVE MY CASE?**

If you have further questions about CDARA, how it might impact any specific matter you are dealing with or how it can be utilized to help resolve your case, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or [jessica@jhmillerlaw.com](mailto:jessica@jhmillerlaw.com).

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