

ORDINANCE NO. 2033

AMENDMENT TO BUILDING CODE RELATING TO CONSTRUCTION DEFECTS
AND A RIGHT TO CURE DEFECTS

WHEREAS, The City Council finds that there is a need in Broomfield for new construction of owner-occupied attached housing of good quality; and

WHEREAS, The City Council hereby finds and declares that promotion of the construction of good quality owner-occupied attached housing will be facilitated by making changes to existing law that provide clarity on the relationship of the City's building codes to construction defect claims and by providing an opportunity for builders to cure construction defects prior to engaging in litigation; and

WHEREAS, These changes to the Broomfield Municipal Code will further the health, safety and welfare of the citizens of the City and County of Broomfield.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD:

Section 1. A new subsection, 15-03-045 is hereby added to the Broomfield Municipal Code, to read as follows:

15-03-045 Relationship of city building codes to construction defect claims.

(A) In general. A violation of any code as adopted in this Title 15, or a failure to substantially comply with any such code shall not create a private cause of action. A violation of any building code as adopted in this Title 15, or a failure to substantially comply with any such code, 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, unless the violation or failure to substantially comply results in one or more of the following:

- (1) Actual damage to real or personal property, including costs actually incurred to bring into compliance any construction not built to code at the time of construction;**
- (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 real property.**

(B) No strict liability for building code violations. Under no circumstances shall a violation of any city building code as adopted in this Title 15, or a failure to substantially comply with any such code, support or prove a construction defect claim based upon a theory of strict liability, or under the common law doctrine of negligence *per se*.

Section 2. A new Chapter, 15-25 is hereby added to the Broomfield Municipal Code, to read as follows:

Chapter 15-25
Repair of construction defects

15-25-010 Purposes and Applicability

- (A) The purposes of this Chapter are to:
- (1) encourage the construction of owner-occupied multi-family developments;
 - (2) facilitate the implementation of Broomfield's Comprehensive Plan and Zoning Ordinances, both of which contemplate owner-occupied multifamily developments in transit-oriented areas and throughout the City;
 - (3) reassure homeowners that most, if not all, construction defects will be promptly investigated and repaired by builders;
 - (4) motivate all parties to resolve disputes involving construction defects quickly and without the need for expensive and time-consuming litigation.

15-25-020 Definitions

Builder means any entity or individual, including but not limited to a builder, developer, general contractor, contractor, subcontractor, architect, engineer or original seller who performs or furnishes the design, supervision, inspection, construction, or observation of any improvement to real property that is intended to be occupied as a dwelling or to provide access or amenities to such an improvement.

Building Code means any of the codes adopted pursuant to Title 15 of the Broomfield Municipal Code.

Claimant means any individual or entity other than a Declarant having the legal ownership of property that is the subject of an alleged Construction Defect.

Construction Defect means any instance in which a structure or portion thereof does not conform in all material respects to the applicable section(s) of the Building Code, or does not conform to the manufacturer's specifications if those specifications are more strict than the applicable provisions of the Building Code.

Homeowner means, **for purposes of this chapter**, any person who owns a unit in a condominium ~~or planned community~~, but shall not include any declarant or any person having an interest in a unit solely as security for an obligation. As used in this Chapter, **condominium and Declarant** shall have the meanings set forth in C.R.S § 38-33.3-103(12).

15-25-030 Potential Claimants

Original buyers or subsequent buyers of an attached single-family dwelling or a unit in a multi-family building, or the governing homeowners association, may send the notice of Construction Defect provided the notice is sent within the applicable time period.

15-25-040 Claimant's Notice to Builder of Construction Defects; Builder's Acknowledgement; Inspection

- (A) Claimant's Notice. Upon the discovery of any alleged Construction Defect a Claimant must provide written notice via certified mail or personal delivery to the party alleged to have caused or contributed to the defect, in the manner prescribed in this Section, of the Claimant's claim that one or more Construction Defects exists in his/her residence or, with respect to any homeowners association, that one or more Construction Defects exists in any residence or in any common areas or facilities.**

The notice must:

- (1) Provide the Claimant's name, address and preferred method of contact;**
- (2) State that the Claimant alleges a Construction Defect pursuant to this Chapter, against the Builder, and**
- (3) Describe the claim in reasonable detail sufficient to determine the nature and location of alleged Construction Defects.**

- (B) Builder's Responsibilities. After receiving notice of a potential Construction Defects claim, a Builder must do each of the following;**

- (1) Acknowledge Claim in Writing**
 - a. A Builder who receives a notice under this Chapter shall acknowledge receipt of the notice, in writing, within 14 days after receipt. The notice shall be sent to the Claimant and to any attorney the Builder knows to be representing the Claimant in connection with the notice.**
 - b. If the Builder fails to acknowledge receipt of a notice within the time specified, this Chapter shall not apply and the Claimant shall be released from the requirements of this Chapter and may proceed with the filing of an action against the Builder.**
- (2) Maintain an agent for notice with the Secretary of State; and**
- (3) If specifically asked to do so by the Claimant and within 14 days of such a request, provide the Claimant or his/her legal representative with:**

- a. copies of all relevant plans, specifications, grading plans, soils reports, and available engineering calculations pertaining to the Claimant's residence;
 - b. all maintenance and preventative maintenance recommendations pertaining to the Claimant's residence; and
 - c. limited contractual warranty information.
- (4) A Builder responding to a Claimant's request for documents may charge reasonable copying costs and may require the copies of the documents to be made onsite.
 - (5) **Builder's Election to Inspect Property.** In addition to the requirements set forth in this Section, if the Builder elects to inspect the claimed Construction Defect, the Builder shall complete the initial inspection and testing, if any, within 14 days after the Builder acknowledged receipt of the notice, and at a mutually agreeable date and time. The Builder shall bear all costs of inspection and testing, including any damage caused by the inspection and testing. Before entering onto the premises for the inspection, the Builder shall supply the Claimant with proof of liability insurance coverage. The Builder shall, upon request, allow the inspection to be observed and recorded or photographed.
 - (6) A Builder who fails to comply with any of the foregoing requirements within the time specified is not entitled to the protection of this Chapter, and the homeowner is released from the requirements of this Chapter and may proceed with the filing of an action.
 - (7) If a notice is sent to the Builder in accordance with section 15-25-040 within the time prescribed for the filing of an action under any applicable statute of limitations or repose, then the statute of limitations or repose is tolled until sixty days after the completion of the notice process described in section 15-25-040. If the Builder elects to repair pursuant to 15-25-050, then the statute of limitations or repose is tolled until sixty days after the completion of repairs.

15-25-050 Builder's Right to Repair

- (A) Within thirty (30) days of the initial inspection or testing, the Builder may elect to repair the Construction Defect and must provide written notice to Claimant of such election. 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. Any notice to repair shall offer to compensate the Claimant for all applicable damages within the timeframe set for repair. Any notice of repair shall be accompanied by a detailed, step-by-step explanation of the particular defect being repaired and setting

forth a reasonable completion date for the repair work. The notice shall also include the contact information for any contractors the Builder intends to employ for the repairs.

- (B) Claimant shall promptly cooperate with Builder to schedule repair work by Builder.
- (C) Within ten (10) days after receipt of the Builder's notice to repair, 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 defect. The Builder may elect to modify the proposal in accordance with the Claimant's objection, or may proceed with the scope of work set forth in the original proposal.
- (D) **Builder's Failure to Comply.** If the Builder fails to send a notice to repair or otherwise strictly comply with this Chapter within the specified time frames, or if the Builder 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 Chapter and may proceed with the filing of an action against the Builder. Notwithstanding the foregoing, if the Builder notifies the Claimant in writing at least 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 reasonable extension of the completion date, not to exceed ten days.
- (E) **Completion of repairs.** The Builder shall notify the Claimant when repairs have been completed. The Claimant shall have ten days following the completion date to have the premises inspected to verify that the repairs are complete and satisfactorily resolved the alleged defects. A Claimant who believes in good faith that the repairs made do not resolve the defects is no longer prohibited by this Chapter from filing legal action.

15-25-060 Warranty of Repairs

The repair work performed by the Builder shall be warranted against material defects in design or construction for a period of 2 years, which warranty shall be in addition to any express warranties on the original work.

15-25-070 Subsequently Discovered Defects

Any alleged Construction Defect discovered after repairs have been completed shall be subject to the same requirements of this Chapter if the Builder did not have notice or an opportunity to repair the particular defect.

Section 3. This ordinance shall be effective seven days after publication following final passage.

INTRODUCED AND APPROVED after first reading on September 13, 2016, and ordered published in full.

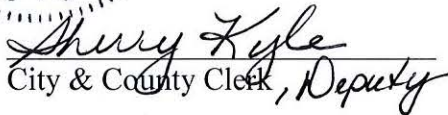
INTRODUCED A SECOND TIME and approved on October 11, 2016, and further ordered published in full.

THE CITY AND COUNTY OF BROOMFIELD, COLORADO



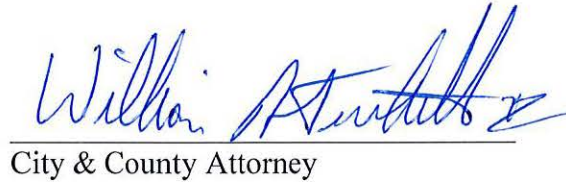


Mayor



City & County Clerk, Deputy

APPROVED AS TO FORM:



City & County Attorney

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