



SEPTEMBER 2023

The Decline of Condominium Construction in Colorado

Addressing Litigation Reform to Alleviate the Housing Affordability Crisis

Author: CSI Housing Fellow Peter LiFari



About the Author

Peter LiFari, 2023 CSI Housing Fellow

Maiker Housing Partners, a socially conscious public housing authority, owner, operator and developer of multifamily affordable housing based in Adams County, Colorado. In his role as CEO, LiFari leads a passionate team committed to ending the cycle of generational poverty by providing individuals and families with access to affordable housing, support programs and by engaging in community development. LiFari is a compassionate visionary whose leadership style is grounded in treating individuals with empathy, warmth and grace.

Beyond his work with Maiker Housing Partners, LiFari is currently using his expertise to provide strategic guidance to Rocky Mountain Partnership, a collective impact model, as Co-Chair of their Steering Committee. Additionally, he was appointed by the Governor of Colorado to serve on the inaugural Colorado Statewide Middle Income Housing Authority Board and was recently appointed Vice Chair. LiFari also serves on the NAHRO Board of Governors and as Chair of the National NAHRO Community Revitalization and Development Committee. In these roles, LiFari addresses a broad range of issues including affordable housing policy, economic vitality of cities and more. LiFari is the current 2023 Housing Fellow and past Terry J. Stevenson Fellow at the Common Sense Institute and is frequently invited to showcase his expertise in affordable housing through local and national speaking engagements including panel discussions and podcasts.

LiFari is a graduate of the Maryland Institute College of Art. He earned his MFA from Queens College and his MBA from the Florida Institute of Technology.

About Common Sense Institute

Common Sense Institute is a non-partisan research organization dedicated to the protection and promotion of Colorado's economy. CSI is at the forefront of important discussions concerning the future of free enterprise and aims to have an impact on the issues that matter most to Coloradans. CSI's mission is to examine the fiscal impacts of policies, initiatives, and proposed laws so that Coloradans are educated and informed on issues impacting their lives. CSI employs rigorous research techniques and dynamic modeling to evaluate the potential impact of these measures on the economy and individual opportunity.

Teams & Fellows Statement

CSI is committed to independent, in-depth research that examines the impacts of policies, initiatives, and proposed laws so that Coloradans are educated and informed on issues impacting their lives. CSI's commitment to institutional independence is rooted in the individual independence of our researchers, economists, and fellows. At the core of CSI's mission is a belief in the power of the free enterprise system. Our work explores ideas that protect and promote jobs and the economy, and the CSI team and fellows take part in this pursuit with academic freedom. Our team's work is informed by data-driven research and evidence. The views and opinions of fellows do not reflect the institutional views of CSI. CSI operates independently of any political party and does not take positions.

Special Acknowledgement

CSI would like to acknowledge and thank **Tom Hayden with Zonda**, for his expertise and willingness to contribute to this report. His analysis of the housing development market was instrumental to arriving at the findings in this report.

Table of Contents

Key Findings	5
Introduction - Where Have All the Condos Gone?	6
Problem Definition - What Everyone Is Talking About	8
Why Reform is Necessary - The Elephant Is in The Room	11
How Did We Get Here? A Brief History of Construction Litigation Laws in Colorado ..	14
Nationwide Stagnation of Condominium Construction	16
Policy Solutions for Colorado	17
Conclusion	21

Key Findings

- Condo development has grinded to a near halt in Colorado. Condos are the most affordable owner-occupied housing type.** Condominium development between 2018 and 2022, across 11 front range counties which collectively house over 80% of Colorado's population, was 76% lower than between 2002 and 2008. This amounted to 14 new apartments for every 1 new condo in recent years, while there was 1 new condo for every 1.25 apartments in the 6 years prior to 2009.
- In 2022, Colorado's housing affordability dropped at the 2nd fastest rate since 2009 according to CSI's Homebuyer Misery Index.**
 The Colorado Association of Realtors Housing Affordability Index shows the affordability of townhomes and condos declining at a faster rate than single family homes during this time, however they remain 32% more affordable.
- Consumer demand for condos remains strong in Colorado despite the downturn in construction.** There were 2.4 resold condos for every new condo sale in 2005. In 2022, there were 30 condo resales for every new sale. This is especially true for affordably priced condos.
- Spiking insurance costs make condos less attractive to developers.** The high frequency and high cost of construction liability litigation has driven insurance companies to raise insurance rates for developers. Notably, insurance costs for condominiums surged to 5.5% of a project's hard costs. That was more than 233% higher than multifamily rental home projects, which had insurance costs as low as 1.1% to 1.65% of project hard costs.
- The number of active condo developers in Colorado has fallen due to high costs.** Over the 15-year span from 2007 to 2022, the number of unique condominium developers engaged in condominium development plummeted by 84%, dropping from 146 to 23. This stark decline underscores the significant impact of construction liability litigation laws on the willingness of developers to engage in condominium projects.
- To fill the market demand for affordable condominiums, Colorado needs policy reform that balances homeowner and developer risk.** Adequate reform does not require the repeal of existing law but can instead involve a strategic series of incremental reforms. Those reforms should include delegable duties, a right to remedy, a safe harbor provision and support from the state's new Middle-Income Housing Authority.

*Since 2018, there has been **14 new apartments for every 1 new condo** while there was 1 new condo for every 1.25 apartments in the 6 years prior to 2009.*

Introduction - Where Have All the Condos Gone?

The disappearance of condominiums in Colorado embodies the state's housing affordability challenges. Be it because of restrictive zoning regulations that hinder developers' ability to deliver denser housing products or anti-growth sentiment commonly referred to as "NIMBYism," we simply can't seem to figure out how to deliver the types of housing Coloradans desire at the price points they can afford.

Over the past fifteen years, Colorado condominium construction has experienced a severe decline. Condominium development between 2018 and 2022, across 11 front range counties which collectively house over 80% of Colorado's population, was 76% lower than between 2002 and 2008. This amounted to 14 new apartments for every 1 new condo in recent years, compared to 1 new condo for every 1.25 apartments in the 6 years prior to 2009. Concurrently, Colorado cities have struggled to facilitate a regulatory environment that correlates into an adequate supply of all housing types to meet population growth. From 2008 to 2019, Colorado grew by an annual average of 77,731 new residents but built only 25,682 new homes per year.¹ The overall stagnation of housing development which began at the onset of the Great Recession has manifested into a Colorado housing market that is affordable to only the highest of income earners.

The decline in new condo development is perplexing at first given the high demand for condos and starter homes across the state. Amid a thriving economy and an influx of young professionals, condos are considered attractive choices for many buyers due to their low-maintenance lifestyle and often more affordable price tags compared to single-family homes. In essence, condos are the ideal starter homes and the ideal options for over housed seniors at affordable prices. The question is: Where have all the condos gone?

Despite the decline in construction, the demand for condos in Colorado remains strong. Many residents, particularly renters who are homeownership-ready yet priced out of the market and empty nesters living in homes too large for their current needs, prefer the convenience and amenities that condos offer, such as communal spaces and high walkability scores. Additionally, relatively low maintenance and upkeep requirements help condos appeal to those seeking a hassle-free lifestyle.

Colorado housing developers attribute the reduction in condo construction to the state's construction litigation laws and subsequent higher insurance and liability costs. These laws have been criticized for their strict liability standards that make developers vulnerable to expensive and lengthy litigation over perceived defects in their projects. Highly capitalized publicly traded production builders have almost entirely exited the condominium market. The consequence has been a noticeable decline in the supply of condos, contributing to the ongoing housing affordability crisis in Colorado. Fewer housing options has priced out many potential buyers, exacerbating the challenges faced by those looking to enter the housing market in the state.

As such, individuals who would normally move to Colorado have decided to look elsewhere. Colorado's net migration shrank by over 80% in 2021 and 2022 compared to the 5-year average through 2019.ⁱⁱ

Problem Definition - What Everyone Is Talking About

The problem of declining condominium construction in Colorado is a multifaceted one with significant implications for the state’s housing market. CSI’s analysis, using data provided by Zonda, sheds light on the severity of the situation.

Between 2002 and 2008 there were an average of 3,264 condo starts annually. The average since 2008 has been just 574, an 82% decline. Since 2018 there has been a slight recovery, as the average annual number of new condominiums starts has increased to 850. Though this is an improvement from the years immediately following the financial crisis, it is still 76% lower than the quarterly average leading into the crisis when Colorado’s population was 16% lower. Colorado’s population is now 20% larger than it was in 2008.

Following the '08 housing and financial crisis, builders and developers increasingly opted for other types of housing developments, particularly multifamily rental complexes. They were concerned in large part about condo and townhome construction defect laws and legal risks.

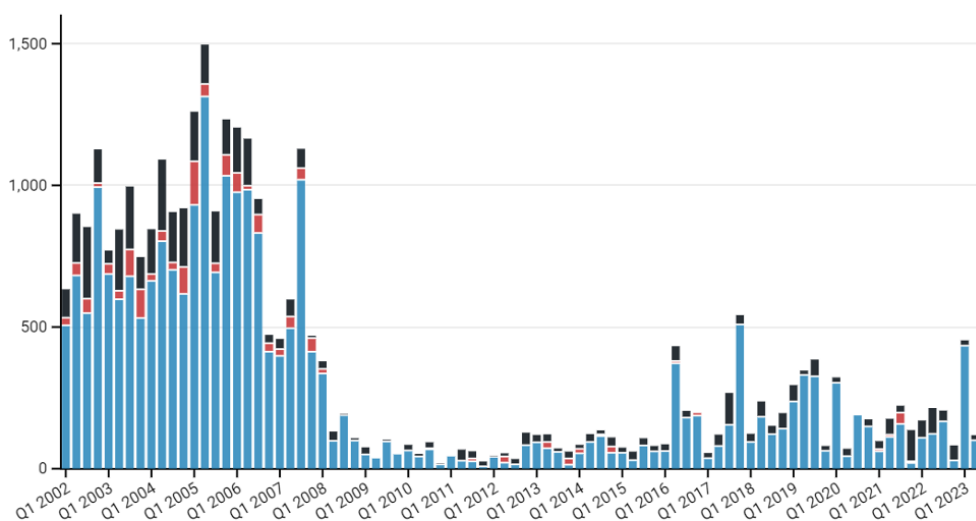
This has led to a shortage of available condos in the market, exacerbating the state’s already strained housing supply. The impact on the overall housing market and housing affordability in Colorado is profound since condos provide homeownership at a significantly lower average cost than single-family homes.

Figure 1

Condominium Starts across the Front Range

Quarterly numbers of condo starts across 11 Front Range counties

■ Metro Denver (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Elbert, Jefferson) ■ Colorado Springs (El Paso)
■ Northern Colorado (Larimer, Weld)



Source Data: Zonda

The Denver metro region is a case example. As of June 2023, the median sales price of a single-family home was \$625,000 and that of a townhouse/condo was \$425,000—a difference of 32%.ⁱⁱⁱ It is no wonder that demand for condos remains high and low supply has decreased affordability. The National Association of Realtors’ Housing Affordability Index, which returns a score of 100 if a typical family earning the local median income can qualify for a typical mortgage, paints a clear picture. As of August 2023, townhomes and condos remain more affordable than single family homes, however the gap has narrowed significantly since 2012.^{iv} Despite robust demand for condominiums on the resale market, the scarcity of new units, driven by the escalated risk condominium development presents, has made the limited annual supply significantly less affordable to the average Coloradan. This shortage of affordable condominiums plays a pivotal role driving Colorado’s rapid housing cost escalation. While diversifying housing production is essential, it’s critical to note that homeowners’ net-worth averages more than 40 times that of renters. This stark disparity illuminates the urgency for Colorado leaders to strongly reconsider allowing the primary affordable homeownership segment to continue its stagnation.^v

Figure 2

Comparison of Condo Sales			
	New For-Sale Home Deed Closing Transactions	Resale For-Sale Home Deed Closing Transactions	Number of Resales for Every New Sale
2005	3,132	7,503	2.4
2007	2,296	5,667	2.5
2012	569	5,025	8.8
2017	274	10,235	37.4
2022	304	9,252	30.4
2023 YTD (thru mid-August)	61	4,574	75.0

Source: Zonda

Figure 3

Share of Condo Sales Under \$300,000		
	New For-Sale Home Deed Closing Transactions	Resale For-Sale Home Deed Closing Transactions
2005	88%	88%
2007	67%	84%
2012	45%	85%
2017	19%	71%
2022	21%	31%
2023 YTD (thru mid-August)	2%	32%

Source: Zonda

The consequences of the housing affordability crisis extend beyond individual residents to affect the state’s economy and overall growth. As housing becomes less affordable, Coloradans face difficulties finding suitable housing near their workplaces, leading to longer commutes and discouraging job seekers from relocating to Colorado. The lack of affordable housing options can also hinder businesses’ abilities to attract and retain talent, weakening economic productivity and growth. Another stark example of the high cost of housing, as detailed in CSI’s April 2023 report “Assessing Colorado’s Economic Competitiveness: Mounting Cost of Labor and Environmental Policy,” is the reduction of migration in Colorado over the last two years, which is estimated to have reduced employment by 14,000 jobs.^{vi} If that trend continues, it could decrease the state’s labor force by 53,000 and its total employment by 153,000 in just two years.

Why Reform is Necessary - The Elephant Is in The Room

Condominiums and townhomes play a vital role in the housing continuum. They often offer a more affordable option for first time homebuyers and less upkeep for seniors. Between 2002 and 2008 attached for-sale housing units accounted for 63% of all multifamily starts, including rentals, across the 8-county Denver metro. Since 2009, attached for-sale housing units have accounted for 27% of new multifamily housing.

Isolating condominiums as a share of housing unit starts shows a more startling trend. Between 2002 and 2008, non-condo attached for sale housing units accounted for 29% of all multi-family housing units starts. Since 2009, this segment accounted for 22%. Condominiums have fared much worse. Between 2002 and 2008, condos were 34% of all multifamily unit starts across the 8 county Denver metro. Since 2009, they have been just 5%. In 2022, condos were just 3% of all multifamily housing unit starts.

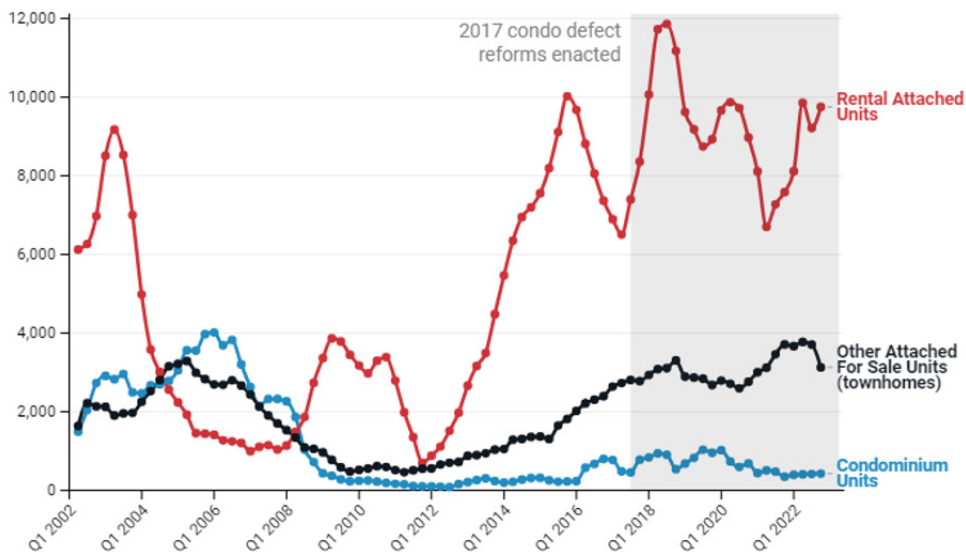
One of the main reasons cited by developers for this decline is the strict liability standards imposed by construction defect laws in Colorado. These laws hold developers and builders accountable for perceived defects in the construction of condominium projects, even if the defects are minor, provide little to no economic loss to the homeowner, or do not affect the structural integrity of the building. As a result, developers face a higher risk of costly litigation and potential liabilities, making condo construction a less appealing investment option compared to other types of housing developments.

The impact of construction defect laws on developers' risk perceptions cannot be overstated. The reality of inevitable, expensive lawsuits and legal disputes over minor construction issues leads

Figure 4

Unit Starts of Attached Homes in 8-County Denver Metro

Quarterly 12-month rolling totals of attached housing units across the 8-county Denver metro (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Elbert, Jefferson)



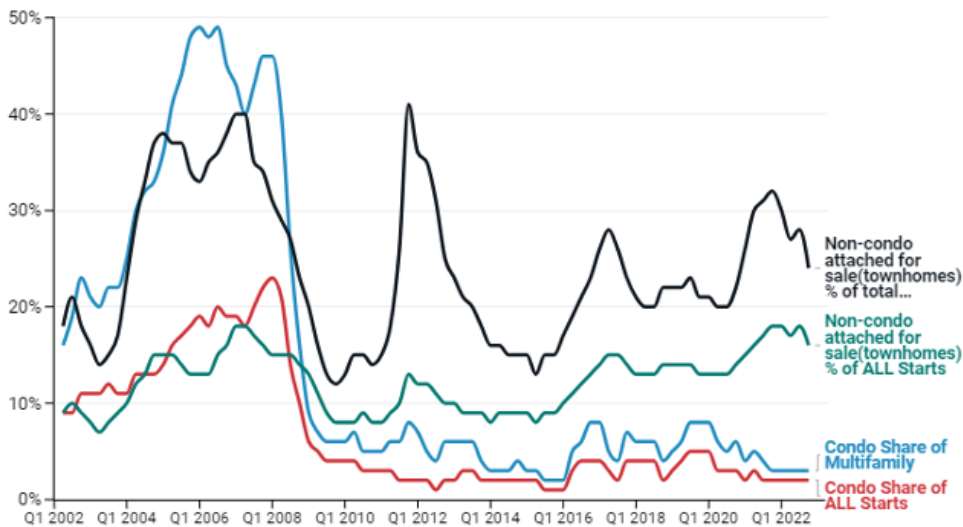
Source Data: Zonda and Real Page Inc.

developers to shy away from condo projects altogether. Instead, many developers and subcontractors opt for less risky ventures, such as single-family homes or multifamily rental communities, where the liability exposure is lower. Take for example the number of unique condominium builders active in the condominium space in 2007, compared to 2022. Over that 15-year period, the number of active condominium developers fell 84% from 146 to 23.

Figure 5

Condos' Share of Housing Development Remains Low

The rate of condo development in metro Denver (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Elbert, Jefferson) is well below what it was before the 2008 financial crisis. This differs from townhomes share of ALL housing starts which has returned to pre-08 levels.



Source Data: Zonda

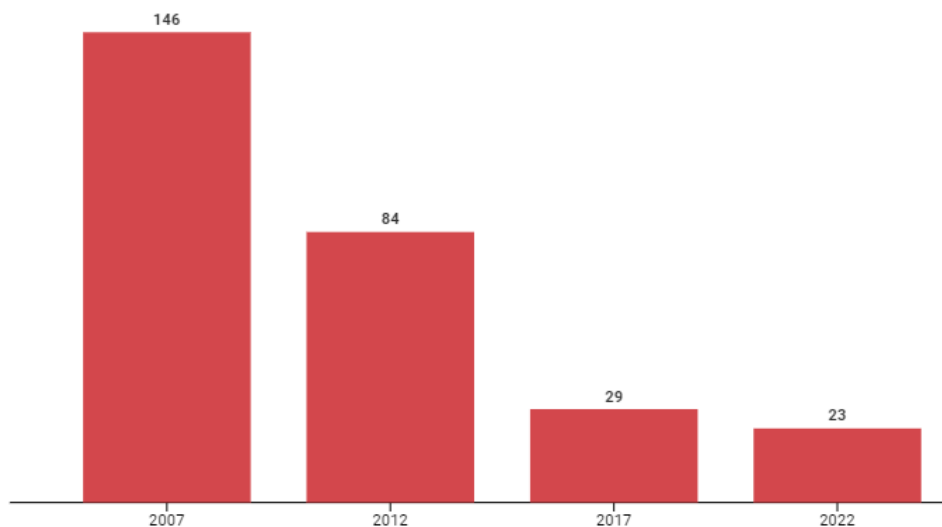
Furthermore, Colorado's construction litigation environment not only deters developers but also affects their ability to secure affordable insurance for condo projects. As the frequency of construction defect litigation increases, insurance companies adjust their rates, accordingly, passing on the higher costs to developers. This, in turn, raises the price per unit for potential buyers, further reducing the appeal of condo projects.

Below are the insurance costs by product type ranging from a low end of 1.1% to 1.65% of project costs for commercial and single-family home product types, 3.5% for townhomes and a staggering but not surprising 5.5% for condominiums, which represents a 233% difference in insurance

Figure 6

Unique Condo Builders in Metro Denver (2007–2022)

In 2007 there were 146 different Condominium developers in Metro Denver. In 2023 there were just 23.



Source Data: Zonda

costs between single family home and condominium projects. Through data provided by Propel and CRC Insurance, a prominent regional insurance brokerage, this concerning trend came to light. The insurance costs for condominiums compared to all other product types have been steadily diverging over the last decade. This growing gap, most notably the spread between for-rent, and for-sale multifamily products is directly linked to the litigious nature of condominiums. Ominously, the brokerage stated that the current market disparity marks the widest spread they've ever observed within the sector.

The convergence of heightened risk and escalating insurance expenses has created a substantial disincentive for developers and subcontractors considering condominium construction. Consequently, production builders have opted to leave this segment, causing a significant transformation in the housing landscape. This shift has led to a disproportionate share of multifamily rental project initiations compared to past patterns, thereby restricting the availability of homes for sale in the Colorado market. As a result, median home resale values have surged, adversely affecting housing accessibility and affordability for residents of Colorado.

This rapid decline in housing affordability can be seen in the Colorado Homebuyer Misery Index developed by CSI.^{vii} The decline in housing affordability in Colorado since 2009 ranks 2nd in the nation. As a result, consumer demand for condos remains strong in Colorado despite the downturn in construction. There were 2.4 resold condos for every new condo sale in 2005. In 2022, there were 30 condo resales for every new sale. This is especially true for affordably priced condos.

Sample Housing Development Insurance Costs

Commercial Product Type (Retail, Apartments, Assisted Living etc.)

1.1% to 1.65 % of Project costs for CCIP/OCIP (varies depending on construction type, # of stories, etc.)

Single Family Product Type (Custom Home and Tract Development)

1.5% to 1.65 % of Project costs for CCIP/OCIP (Custom Homes on low end; Tract Homes on high end)

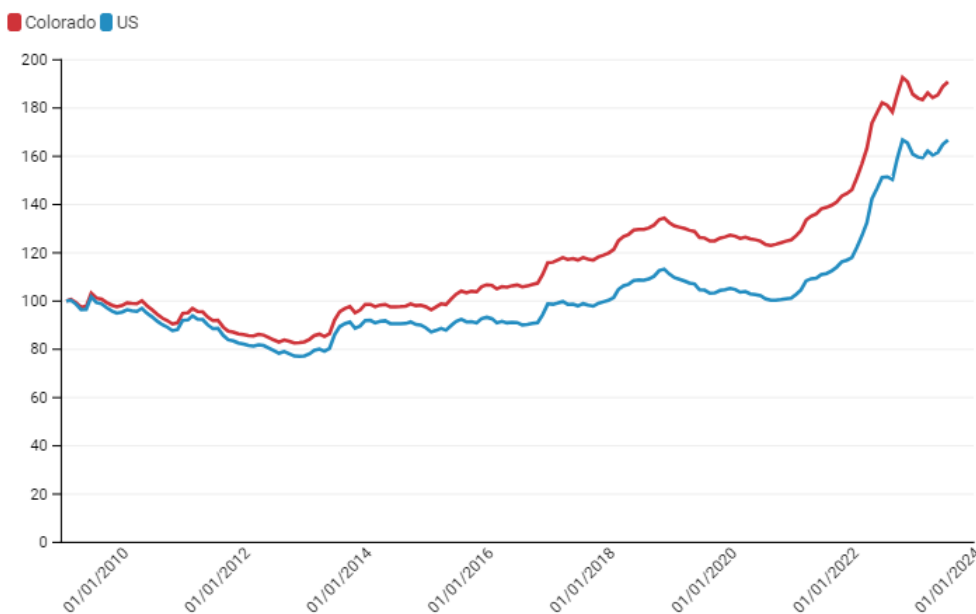
Multi Family Attached Project Types (Townhomes and Condos)

3.5% to 5.5% of Project costs for CCIP/OCIP (Townhomes on low end while condos are typically on the higher end)

Note: Figures above are estimated with insurance limits at 1/2 of total hard costs.

Figure 7

Colorado Homebuyer Misery Index



Source: Zillow, St. Louis Federal Reserve Bank (FRED), and CSI Calculations

How Did We Get Here? A Brief History of Construction Litigation Laws in Colorado

The history of construction defect laws in Colorado dates to the earliest days of the state's housing market. In the 1970s and 1980s, there was an increase in condominium construction to meet growing demand for affordable housing. As the number of condos increased, however, so did complaints from homeowners regarding construction defects, particularly structural issues. Homeowners found it difficult and costly to seek legal remedies for these problems, leading to a push for legislative action to protect their rights and ability to seek a remedy.

In response to the growing concerns of homeowners, Colorado's construction defect laws began to take shape. A key legislative milestone was the passage of the Colorado Construction Defect Action Reform Act (CDARA) in 2001, which aimed to address the rising number of construction defect lawsuits by implementing provisions that required homeowners to provide notice of defects and undergo arbitration or mediation processes before pursuing litigation. The goal was to encourage the resolution of disputes outside of court, reducing the burden on the legal system and developers.

Over time, the political landscape played a significant role in the formulation and revision of these laws. Various stakeholders, including homeowner associations, trial attorneys, developers, and insurance companies, lobbied for their interests, resulting in substantial changes to construction defect law. Below is a summary of some of the Colorado legislature's countless efforts to find a fair middle-ground for both developers and homeowners.^{viii}

- **2001 - HB01-1166:** Colorado Construction Defect Action Reform Act (CDARA): CDARA laid the groundwork for construction defect regulations in Colorado. It established a framework for construction defect claims, requires notice to developers before filing lawsuits, and outlines procedures for resolving disputes.
- **2003 - HB03-1161:** This bill, commonly referred to as CDARA II, introduced notice and homeowner voting requirements for construction defect lawsuits. It aimed to involve homeowners in the decision-making process and ensure that a majority supported legal actions.
- **2007 - HB07-1338:** HB07-1338 prohibits clauses in contracts between homebuyers and construction professionals that waive CDARA or the Colorado Consumer Protection Act prior to a homeowner settling with said professionals after the claim accrues.
- **2010 - HB10-1394:** This bill clarified what constitutes an "occurrence" in a construction defect claim.
- **2017 - HB17-1279:** This, the most recent piece of legislation, requires that, before the executive board of an Home-owners Association (HOA) in a common interest community brings suit against a developer for a defect, the board must notify all unit owners, provide an opportunity for the developer to offer to remedy the defect, and the HOA must obtain the approval of a majority of unit owners to proceed.

Numerous other attempts to address construction defects in Colorado have failed during this period. Some of these changes attempted to help protect developers against frivolous claims, but critics argued that they would have tilted the scales too far in favor of developers and made it harder for homeowners to seek redress for legitimate defects.

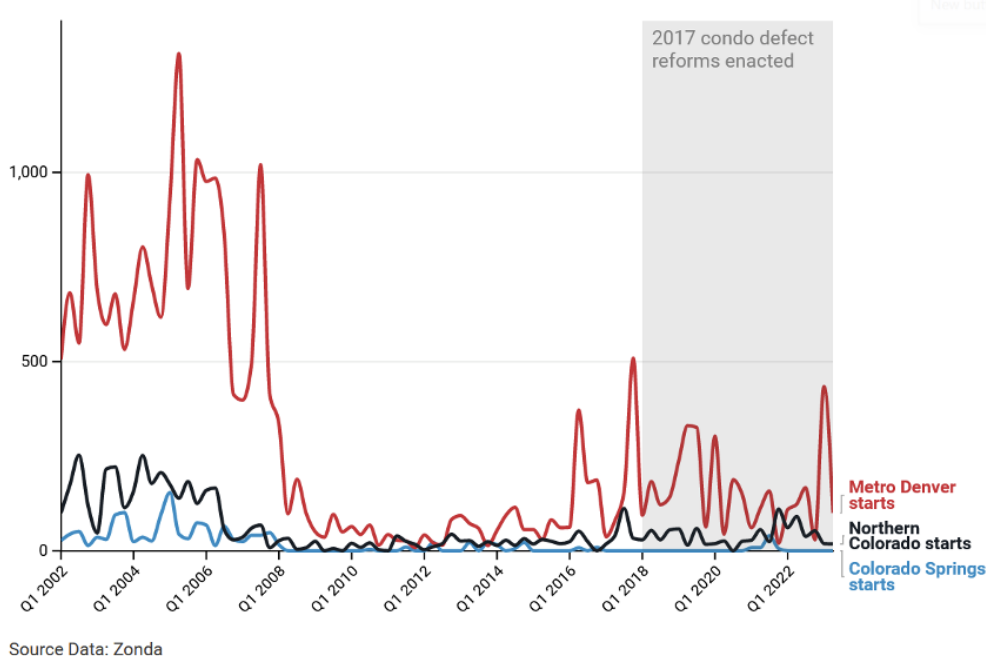
Following years of legislative effort, 2017 marked a pivotal juncture. The passage of HB17-1279, a hard-fought compromise between stakeholders, coupled with Colorado Supreme Court’s endorsement of the Colorado Court of Appeals’ decision in the Vallagio case, offered new hope. The Supreme Court ruling safeguarded developers against the removal of binding arbitration clauses by homeowners, thereby increasing the frequency of arbitration in defect cases, which also extended to trade practices in the Colorado Consumer Protection Act. These two moves were hailed as significant strides forward. Many believed that they would reduce defect litigation and attract both insurers and developers back into the condo-development segment. Despite high hopes for the revitalization of the condominium segment, though, there was only a brief and unsustainable increase in development following the changes.

Regardless of the changes approved in 2017, regulation has brought condo construction to a halt in Colorado and deprived the state of the affordable for-sale housing options that its residents so desperately need. Although the initial intent of construction defect laws was to protect homeowners and promote high-quality construction, the stricter liability standards they impose have deterred developers from building condos.

Since 2017, no major reform efforts have been introduced to the state legislature as policymakers continue struggling to find solutions that incentivize condo construction while ensuring that homeowners’ rights are safeguarded.

Figure 8

Condo Starts before and after 2017 Legislation



Nationwide Stagnation of Condominium Construction

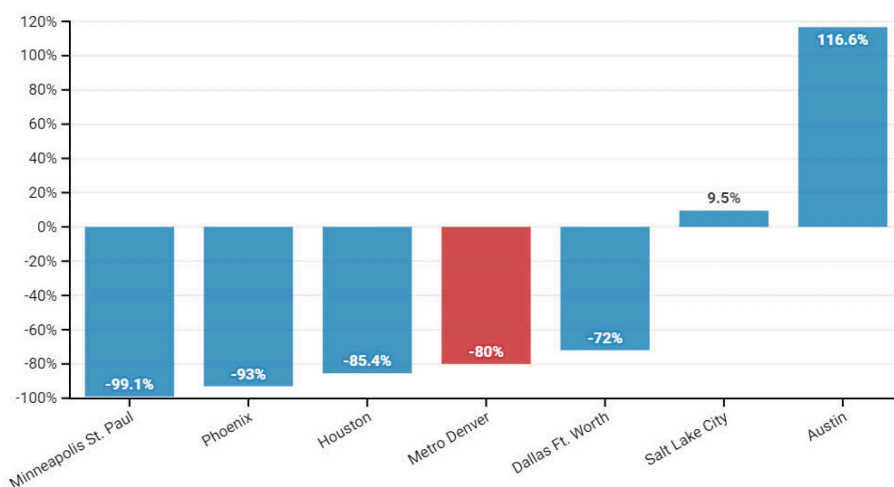
Each state has its own construction defect laws that focus on the same two considerations: time limits and the right to cure. States' statutes of limitations govern the amounts of time that homeowners have to file lawsuits after discovering defects and statutes of repose establish the lengths of time after construction during which developers are liable for defects. Some states also offer developers the right to cure, which requires homeowners to notify developers of defects before they file lawsuits against them. These conditions vary greatly between states; statutes of limitations range between two and 20 years, statutes of repose range between zero and 20 years, and many states do not grant developers the right to cure.

It is challenging to point to another state and say that they've gotten it exactly right. In 2021, only 5.4% of all multifamily development was for sale nationwide—the lowest in nearly fifty years. All this variance aside, developers in most American cities are not building condos at high rates. However, in recent years, Austin and Salt Lake City stand out as regions that have seen condo starts actually surpass the levels from the early 2000s.

Figure 9

Condo Construction Trends in Selected Cities

Bar chart shows the average number of new condo unit starts in select cities between 2022-2023 compared with 2002-2008.



Source Data: Zonda



Policy Solutions for Colorado

Policymakers in Colorado would be right to evaluate other states for effective solutions, but very few localities have established the regulatory conditions necessary for an adequate supply of condominiums. As such, it is in Coloradans' best interests that we forge our own path forward. To that end we offer the following ideas for consideration:

Next Steps on Condo Litigation Reform

Delegate Duties & Right to Remedy

- Property Allocation Responsibility
- An Alternative to Costly Litigation
- Building Homeowner Confidence
- Lowering Insurance Premiums

A Safe Harbor Provision

- The Creation of a Statewide Warranty Standard
- Win-Win for Developers and Homebuyers
- Enhance Overall Quality of Condos

Empowering the Colorado Middle Income Housing Authority (MIHA)

- Facilitate the Development of For-Sale Middle Income Condominiums
- Strategic Partnerships for Impactful Development

A Safe Harbor Provision - The Creation of a Statewide Warranty Standard

Statewide Warranty Standard

- The implementation of a safe harbor provision, such as a Statewide Warranty Standard would create a win-win situation for developers and homebuyers in Colorado. By incentivizing developers to meet specific construction standards, the state can enhance the overall quality of condos, reducing the likelihood of construction defect claims. In return, developers adhering to specified building practices would receive legal protections against certain types of claims, encouraging them to take on condo projects with reduced or eliminated risk. Creating the standard would require vigorous stakeholder engagement from the construction industry, builders' associations, architects, engineers, consumer advocacy groups, legal experts and related government agencies as part of the legislative process at the general assembly. This statewide warranty standard could be created as a statewide model code that local governments could then adopt if they so choose to do so.

- A Statewide Warranty Standard for home construction would complement and enhance existing building codes by working harmoniously with them. Ensuring adherence to existing codes, enhancing the quality of homes built, and homebuyer satisfaction.

Delegable Duties & Right to Remedy - Advancing Condo Development in Colorado

Delegable Duties - Properly Allocating Responsibility

- Incorporating delegable duties into CDARA ensures that each party involved in the construction process takes responsibility for their specific area of expertise. Builders can delegate tasks to licensed subcontractors or design professionals, who are accountable for the quality of their workmanship. This allocation of responsibility fosters transparency and enhances accountability, as it places the onus on the appropriate parties, avoiding undue burden on developers, which has contributed to the higher cost of insurance.

Right to Remedy: An Alternative to Costly Litigation

- The Right to Remedy provides a pathway to an equitable resolution that allows the responsible parties to address construction defects without resorting to protracted and expensive litigation. When defects arise, should the homeowner desire, the responsible party is granted the right to work with the homeowner, find and be obligated to pay for a qualified third party to repair the defect promptly. This streamlined approach ensures expedited resolutions, benefiting both homeowners and developers.
- Alternatively, the Right to Remedy could include an element of the Colorado Motor Vehicle Warranties Act commonly referred to as “Lemon Laws” where the at fault builder is allowed to make four attempts to cure the defect. If after a set number of attempts to cure the defect, the problem remains uncorrected, a third-party vendor is engaged to cure the defect.

The Benefits of Delegable Duties & The Right to Remedy

Reducing Litigation: A Win-Win Situation

- The incorporation of Delegable Duties and Right to Remedy will reduce the likelihood of protracted legal battles between developers, subcontractors, and design professionals. Instead of engaging in costly litigation, responsible parties are incentivized to address defects promptly and efficiently through the remedy process, resulting in a more balanced and positive outcome for all parties involved.

Lowering Insurance Premiums: A Positive Impact on the Industry

- As the frequency and magnitude of claims decrease due to the expedited resolution process, insurance companies will observe a reduction in the number of litigated claims. This, in turn, will lead to greater availability of insurance coverage for developers, subcontractors, and design professionals, ultimately lowering insurance premiums, which will encourage further investment in condo development.

Building Homeowner Confidence

- Unlike the commonly known “Right to Repair,” the Right to Remedy offers homeowners a more dependable and equitable solution. By granting responsible parties the obligation to find and pay for a suitable third-party repair, homeowners can be confident in the resolution process, knowing that their concerns will be addressed efficiently and professionally.

Prioritize Initial Actions, Yet Explore A Novel Approach As Well

While we acknowledge that the proposed common-sense reforms could significantly contribute to enabling the free market to offer Coloradans the housing options, they both desire and can afford, it is essential for Colorado to also contemplate the following additional measure:

A Complimentary Solution - Empower the Colorado Middle Income Housing Authority (MIHA) To Facilitate the Development of For-Sale Middle Income Condominiums

A Groundbreaking Solution

- With the 2022 creation of the Colorado Middle Income Housing Authority, a statewide political subdivision which exists to create middle income rental housing, the state has created a means to facilitate the development of workforce for-sale condos. In collaboration with developers, via legislation updating its statute, MIHA can offer land and financing incentives, tax exemption, retain ownership of the land until after the statute of limitations and repose has elapsed, and serve on the board of the common interest communities Homeowners Association, thereby providing governmental immunity to the community, and long-term HOA and community sustainability. All of this holds the potential to not only accelerate affordable condominium development but also reduces the risk of litigation, lowering insurance costs and enhancing the overall health and stability of Colorado’s housing continuum.

Advantages of MIHA's Role As A Condo Developer

Strategic Partnerships for Impactful Development

- Just as MIHA partners with private and non-profit multifamily rental developers, MIHA can deploy the same benefit leveraging strategy in the for-sale condominium space. Harnessing the collective impact of both the public and private sectors to maximize each sector's intrinsic value.

Incentivizing Development with Land and Tax Exemptions

- Granting MIHA the ability to provide the same incentives it provides to middle income rental development introduces a proven strategy that creates affordable housing in a new and exciting socially responsible manner. Developers are more likely to engage in condo development when projects are supported via local fee waivers, rebates, tax exemptions, and support to acquire land in the form of grants or low-cost loans.

Ensuring Governmental Immunity through MIHA's Participation

- MIHA's role as an owner in the project, via retaining ownership of the land until after the statute of limitations and repose has elapsed and participation on the Homeowners Association offers crucial governmental immunity, protecting developments from frivolous litigation. This immunity boosts developer and insurer confidence by reducing exposure to frequent and costly litigation while Coloradans benefit by increasing their access to attainable home ownership.

Creating Stable Communities

- Homeownership is not just about housing. It is an avenue to building wealth and establishing stable and thriving communities. MIHA's focus on affordable condo development encourages all Coloradans to gain access to the benefits of homeownership, ensuring that homeownership is not a distant dream but a tangible and achievable goal. Housing secure Coloradan families equals a stable, strong and vibrant Colorado.

Conclusion

In the pursuit of addressing Colorado's housing affordability challenges via condominium development, the impacts of CDARA are impossible to ignore. The resulting litigation environment has created a defacto, uninsurable housing type, driving insurers and developers to multifamily rental development, significantly contributing to the drying up of condos built annually. Absent the unlikely repeal of CDARA, a stark reality presents itself. CDARA is here to stay and very few jurisdictions across the country have succeeded in establishing a conducive regulatory environment to meet the demand for condominiums. Hence, Colorado must chart its unique course by embracing a range of policy solutions that reshape the condominium sector, alleviate housing affordability shortfalls, propel economic growth and support thriving families.

Within this comprehensive framework, two pillars emerge: the establishment of a statewide warranty standard (SWS) and the incorporation of Delegable Duties.

By instituting a statewide warranty standard, Colorado incentivizes developers to maintain stringent construction standards, reducing the occurrence of defect claims. Moreover, developers adhering to these elevated standards gain essential legal protections spurring both quality workmanship and a decline in defect litigation.

Complementing this, the integration of delegable duties ensures that every contributor in the construction process shoulders the responsibility for their work. Through the allocation of responsibility, transparency increases, accountability deepens, and undue liability and cost burdens on developers are mitigated.

Navigating disputes within condominium development, the right to remedy emerges as a critical solution. This innovative mechanism sidesteps prolonged litigation, affording responsible parties to promptly address construction defects by a trusted third party at their expense, should the homeowner so desire. A streamlined resolution process cultivates homeowners' rights by encouraging developers to engage in proactive defect resolution.

As construction defect regulation is complex, and controversial, a multifaceted approach is warranted, and the role of the Colorado Middle Income Housing Authority emerges as a new strategy. Through MIHA's partnership-driven model, incentivized by land, financing, tax exemptions and governance within HOA's, a novel avenue for workforce-for-sale condominium development unfolds. MIHA's involvement also adds governmental immunity to developments, providing a barrier against frivolous litigation. This, in tandem with lowered insurance costs, bolsters the affordability of these units and reinforces the stability of Colorado's housing continuum.

If embraced, this policy trajectory reflects a dynamic and new approach to condominium development and housing affordability. The fusion of statewide warranty standards, delegable duties, the right to remedy, and MIHA's strategic role, envisions a future where condominium developers have a fair and transparent regulatory framework and homeowners have assurances to the quality of their home, and have access to legal action to secure quality repairs when necessary. As Colorado pioneers, we've charted a trailblazing policy framework for legislators and Coloradans to consider - where just maybe that old relic called a condo, makes a return to the spotlight... Coming soon to a lot near you.

REFERENCES

- i. <https://commonsenseinstitute.org/co-housing-blueprint/>
- ii. <https://commonsenseinstitute.org/co-economic-competitiveness/>
- iii. <https://car-co.stats.showingtime.com/docs/mmi/x/MetroRegion?src=map>
- iv. <https://car-co.stats.showingtime.com/docs/mmi/x/MetroRegion?src=map>
- v. <https://cdn.nar.realtor/sites/default/files/documents/2023-04-wealth-gains-by-income-and-racial-ethnic-group-04-18-2023.pdf>
- vi. <https://commonsenseinstitute.org/co-economic-competitiveness/>
- vii. <https://commonsenseinstitute.org/sept-2023-homebuyer-misery-index/>
- viii. https://leg.colorado.gov/sites/default/files/construction_defect_laws_and_issues_2015.pdf
- ix. <https://www.urban.org/research/publication/housing-supply-chartbook-december-2021>
- x. <https://buildingsaltlake.com/why-arent-we-seeing-more-new-condos-being-built-in-salt-lake-city-its-complicated/>
- xi. <https://leg.colorado.gov/bills/sb23-035#:~:text=Concerning%20the%20operation%20of%20the,partnerships%2C%20and%20making%20an%20appropriation.>