

COLORADO "HOMEOWNER PROTECTION ACT OF 2007" SIGNED

5/07

Colorado construction defect actions legislation, HB 1338, was signed April 20, 2007. Called the Colorado "Homeowner Protection Act of 2007," this legislation moved quickly through both chambers since its March 7 introduction. This new law preserves the rights of homeowners and associations relating to construction defects, takes effect on passage, and applies to actions filed on or after said date.

The Colorado Legislative Action Committee, CLAC, and state members actively supported and lobbied this legislation. For those states looking to pro-actively draft similar legislation, a synopsis of HB 1338 (as introduced) is in **Heads-Up** at http://www.caionline.org/govt/news/homeowner_colorado.cfm.

Among the highlights of this legislation (*capital letters indicate new material added to existing statutes*):

13-20-806. Limitation of damages. (7) (a) IN ORDER TO PRESERVE COLORADO RESIDENTIAL PROPERTY OWNERS' LEGAL RIGHTS AND REMEDIES, IN ANY CIVIL ACTION OR ARBITRATION PROCEEDING DESCRIBED IN SECTION 13-20-802.5 (1), ANY EXPRESS WAIVER OF, OR LIMITATION ON, THE LEGAL RIGHTS, REMEDIES, OR DAMAGES PROVIDED BY THE "CONSTRUCTION DEFECT ACTION REFORM ACT", THIS PART 8, OR PROVIDED BY THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S., AS DESCRIBED IN THIS SECTION, OR ON THE ABILITY TO ENFORCE SUCH LEGAL RIGHTS, REMEDIES, OR DAMAGES WITHIN THE TIME PROVIDED BY APPLICABLE STATUTES OF LIMITATION OR REPOSE, ARE VOID AS AGAINST PUBLIC POLICY.

(b) A WAIVER, LIMITATION, OR RELEASE CONTAINED IN A WRITTEN SETTLEMENT OF CLAIMS, AND ANY RECORDED NOTICE OF SUCH SETTLEMENT, BETWEEN A RESIDENTIAL PROPERTY OWNER AND A CONSTRUCTION PROFESSIONAL AFTER SUCH A CLAIM HAS ACCRUED SHALL NOT BE RENDERED VOID BY THIS SUBSECTION (7).

(d) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (7) TO THE CONTRARY, THIS SUBSECTION (7) SHALL APPLY ONLY TO ACTIONS THAT ARE GOVERNED BY THE PROVISIONS OF THIS PART 8, ALSO KNOWN AS THE "CONSTRUCTION DEFECT ACTION REFORM ACT", AND SHALL NOT BE DEEMED TO ALTER OR AMEND THE LIMITATIONS ON DAMAGES CONTAINED IN THIS PART 8, INCLUDING THE LIMITATIONS ON TREBLE DAMAGES AND ATTORNEY FEES SET FORTH IN THIS SECTION.

(e) NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO

RENDER VOID ANY REQUIREMENT TO PARTICIPATE IN MEDIATION
PRIOR TO FILING A SUIT OR ARBITRATION PROCEEDING.

13-20-807. Express warranty - not affected. The provisions of this part 8 are not intended to abrogate or limit the provisions of any express warranty OR THE OBLIGATIONS OF THE PROVIDER OF SUCH WARRANTY. The provisions of this part 8 shall apply to those circumstances where an action is filed asserting one or more claims for relief including a claim for breach of warranty; EXCEPT THAT IN ANY SUCH ACTION, SECTION 13-20-806 (7) SHALL NOT APPLY TO BREACH OF EXPRESS WARRANTY CLAIMS EXCEPT TO THE EXTENT THAT PROVISIONS OF THE EXPRESS WARRANTY PURPORT TO WAIVE OR LIMIT CLAIMS FOR RELIEF OTHER THAN THE BREACH OF EXPRESS WARRANTY CLAIM. The provisions of this part 8 shall not be deemed to require a claimant who is the beneficiary of an express warranty to comply with the notice provisions of section 13-20-803.5 to request ordinary warranty service in accordance with the terms of such warranty. A claimant who requires warranty service shall comply with the provisions of such warranty.

A copy of the final language can be found at: <http://www.leg.state.co.us/>. For “behind the scenes” specifics regarding the path of this legislation, please contact Chris Pacetti, Colorado LAC Chair, at chrisp@kcranch.org.