



ATTAINABLE AND
AFFORDABLE
HOMEOWNERSHIP

SB24-106: Right to Remedy Construction Defects *Senators Zenzinger & Coleman and Representative Bird*

Get the Facts on SB24-106

BACKGROUND

Colorado needs more affordable and attainable housing options and legislators can act now to address this challenge. Since 2001, there have been several amendments to the Construction Defect Action Reform Act, resulting in frivolous lawsuits and contractors' liability insurance spiking since insurers have left the market. Development of condominiums - one of the most affordable owner-occupied housing options - has virtually halted, and the cost of litigation has been passed on to Colorado homeowners. This is a dynamic problem that requires long-term funding solutions, but there is a way to provide Coloradans with more available housing options now.

SUMMARY OF SB24-106:

The bill includes the following provisions:

- **Right-to-remedy** – If a construction professional is notified of a defect claim, this provision gives the property owner the choice to either have the original contractor make the repair, or work with the contractor to find someone acceptable to perform the remedial work. If there are problems with the remedial work, they can determine how to proceed with the entity responsible for providing the remedial work.
- **Informed consent** – This consumer protection provision ensures the disclosures required in statute are honored and that homeowners receive their disclosures prior to providing their written consent to litigate a construction defect claim by a homeowner's association, and it requires consent of 67% of the actual unit owners prior to pursuing litigation. This threshold is consistent with every other required vote under the Colorado Common Interest Ownership Act (CCIOA) to encumber common elements or to repair or replace common elements. Additionally, the provision requires homeowner's associations to retain notices, and if a notice of claim changes, they are required to again inform homeowners and receive their consent.
- **Negligence per se** – Under current law, claims often contain technical code violations that do not harm the performance of a home or affect its structural integrity, functionality, or create a health and safety issue. In this provision, no claims for negligence can be asserted for noncompliance with technical code violations, unless those violations cause actual damages to real or personal property within a home or complex, cause bodily harm or wrongful death, or an imminent and unreasonable threat to life.

WHY SUPPORT SB24-106:

This bill will help to increase the supply, quality, and accessibility of affordable housing units and create more opportunities for Coloradans to build wealth through homeownership, by:

- ✓ Helping to decrease insurance costs by reducing the magnitude and frequency of claims;



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- ✓ Ensuring that homeowners have the right to pursue timely and effective remedies for construction claims, and that such remedies are fair to the homebuyer but do not prevent the construction of attainable multifamily for-sale housing options;
- ✓ Providing a faster path to resolve disputes for homeowners; and
- ✓ Giving homeowners greater transparency about construction litigation related to their property.

ORGANIZATIONS IN SUPPORT OF SB24-106:

- Adams County Regional Economic Partnership
- American Council of Engineering Companies of Colorado
- American Institute of Architects – CO
- American Property Casual Insurance Association
- American Subcontractors Association
- Apartment Association of Metro Denver
- Arvada Chamber of Commerce
- Associated Builders and Contractors, Rocky Mountain
- Associated General Contractors of CO
- Building Jobs 4 Colorado
- City of Aurora
- City of Centennial
- City of Fountain
- Colorado Apartment Association
- Colorado Association of Homebuilders
- Colorado Association of REALTORS
- Colorado Bankers Association
- Colorado Business Roundtable
- Colorado Civil Justice League
- Colorado Competitive Council
- Colorado Concern
- Colorado Contractors Association
- Colorado Hotel & Lodging Association
- Colorado Mortgage Lenders Association
- Colorado Municipal League
- Colorado Roofing Association
- Colorado Springs Housing & Building Association
- Colorado Springs Chamber & EDC
- Colorado Women's Chamber of Commerce
- Denver Metro Chamber of Commerce
- Denver Metro Commercial Association of REALTORS
- Denver Regional Council of Governments (DRCOG)
- Denver South Economic Development Partnership
- Douglas County Business Alliance
- Douglas County Commissioners
- Economic Development Council of Colorado
- Elevation Community Land Trust
- Habitat for Humanity of Colorado
- Healthier Colorado
- Hispanic Contractors of Colorado
- Home Builders Association of Metro Denver
- Homeownership Opportunity Alliance
- Housing and Building Association of Colorado Springs
- Housing Colorado
- Independent Community Bankers of Colorado
- Independent Electrical Contractors – Rocky Mountain Chapter



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- International Council of Shopping Centers
- Jeffco EDC
- Metro District Education Coalition
- Metro Mayors Caucus
- NAIOP Colorado
- National Utility Contractors Association - Colorado
- Northern Colorado Legislative Alliance
- Northwest Douglas County Chamber and EDC
- Parker Chamber of Commerce
- Pikes Peak Area Council of Governments
- Pikes Peak Regional Building Department
- Rocky Mountain Mechanical Contractors Association
- Sheet Metal and Air Conditioning Contractors Association
- South Metro Denver Chamber
- Town of Monument
- Urban Land Conservancy
- Westminster Chamber of Commerce

For more information, contact Jenn Penn at jenn@domestrategies.com or 720-937-2148 or Emma Hudson at emma@emmahudsonconsulting.com or 608-669-3662.



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Frequently Asked Questions

Why are you focused on construction liability litigation?

While construction liability litigation is a key element contributing to Colorado's affordable housing crisis, this is a complex issue and there is no silver bullet. The current Colorado statute regarding construction liability can result in construction professionals who make modest mistakes in housing construction finding themselves in costly and time-intensive lawsuits. This raises contractors' liability insurance premiums over the long term, which adds to the costs of development, makes housing more expensive and reduces our housing options, especially condominiums.

How is this bill going to help with Colorado's housing crisis?

Increasing the supply, quality, and accessibility of affordable housing units will expand and sustain homeownership, and Colorado's deficit of affordable and attainable housing is most acute in the availability of condominiums, primarily because of construction liability lawsuits.

The goal of this bill is to reduce insurance costs by decreasing the magnitude and frequency of claims, provide other means to resolve disputes faster for homeowners, and ultimately help reduce building costs to produce attainably priced homes and create more opportunities to build wealth for Coloradans through homeownership.

Why is your focus on condominiums?

Condominiums are critically important because they help close the affordability gap, add a needed element to the diverse mix of housing options we can offer Coloradans, are historically the most affordable owner-occupied housing option, and most importantly, they are a key path to first-time homeownership.

Why aren't condominiums being built in Colorado now?

In addition to the high frequency and cost of construction liability litigation in this state, many other factors contribute to the lack of condominium construction – lower insurance “hard costs” for rental apartment construction, permitting issues, affordable housing requirements, and a shortage of land zoned for transit-oriented development, or higher density housing located in and near transit corridors.

How is this bill different from the one you worked to pass in 2017?

While the main provisions in our [proposed 2017 legislation](#) are still valid and important, over six years of housing data demonstrates they did not go far enough to adequately address our housing affordability crisis with policy reform that protects the rights of homeowners, while also encouraging more condominium construction.



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How are Colorado's lower-income earners and workforce affected by this issue?

Condominiums can offer an affordable owner-occupied housing alternative at different price points, providing our essential workforce positions (i.e., teachers, nurses, firefighters, first responders, police and skilled laborers, etc.) with a path to homeownership. But Colorado is quickly becoming a place where low- and middle-income earners cannot afford to own a home, weakening the workforce and threatening to undermine the state's economy. Many factors contribute to this issue nationally and in Colorado, including:

Housing Shortage

- The U.S. is short about 3.8 million housing units relative to demand, making one of the toughest real estate markets in history even more difficult for middle- and low-wage earners trying to rent and buy homes.
- As of 2022, Colorado has an unmet housing need of between 65,000 and 100,000 units.
- According to the Colorado Housing Finance Authority, Colorado has a housing unit shortage of over 225,000 units for current residents (DMCC/Metro Denver EDC, *Toward A More Competitive Colorado 2024*).

Workforce Shortage

- The availability of workers in Colorado has been constrained, with more than two open jobs for each unemployed worker in 2022, more than double the 2021 rate (DMCC/Metro Denver EDC, *Toward A More Competitive Colorado 2024*).
- Our latest estimates show we need 50,000 skilled trades employees by 2030.

High Costs of Homeownership

- According to a [recent report from Redfin](#), the median home-sale price in Denver is nearly \$580,000, which means that to comfortably afford a home you would need an annual income of at least \$158,187.
- At the same time that fewer mid-priced condominiums are being built, they are also becoming increasingly more expensive to construct, and that cost is passed on to the consumer in the form of higher sales prices.
 - In 2005, the majority of new and existing condominium units were priced under \$300,000 because of an adequate supply. By 2023, only two percent of new condominiums built were priced under \$300,000. And, due to the severe lack of supply, currently only a third of resale condominiums are available for a price that is under \$300,000. In October 2023, the mid-point price for metro Denver condominiums was \$418,000.



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- In the skilled trades industry, this has become a workforce housing issue. As our baby boomer population continues to age out of the workforce, many skilled trades need to hire younger apprentices to fill that gap, but with apprentices beginning their careers making an average of \$40,000 per year, homeownership is out of reach.

How does this offer more housing affordability options to different populations or communities?

Condominiums offer an affordable owner-occupied housing alternative at different price points for diverse populations of people. For example:

- Individuals with disabilities need access to smaller, more affordable housing that is closer to where they work and public transit.
- They offer the more mature population (elderly, retirees, empty nesters) the opportunity to downsize and live near their younger family members without having to maintain a house too large and expensive for their needs.
- They provide the essential workforce that drives our economy – like teachers, nurses, grocery clerks, restaurant and retail staff, childcare providers, firefighters, first responders, police and skilled laborers, etc. – with more opportunities to live in the communities they serve and a path to homeownership.
- It's imperative for the health of Colorado's economy to attract and retain our educated and talented young professionals, and for them condos are less expensive, giving first-time property owners a chance to build equity and continue to progress along the homeownership continuum.

How are Colorado's minority communities affected by housing affordability?

- According to housing advocates, homeownership is the primary means of accumulating wealth for the average family, and home equity can be tapped for things like college tuition, paying off burdensome credit card debt or helping your kid with the down payment on their home. Closing the homeownership gap is the most effective way to close the racial wealth gap.
- Minority communities are disproportionately represented in homeownership both nationally and in Colorado.
 - According to the National Women's Law Center's study done last year, single Latina and Black women have the lowest homeownership rates of any group in the U.S., with 39% of single Latinas and 37% of single, non-Hispanic Black women owning a home in 2021, compared to close to 62% of non-Hispanic white women in similar circumstances.
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- According to Urban Institute researcher Jung Hyun Choi, single women with children also face low homeownership rates compared to other groups, including single men with children.
- According to the [National Association of Realtors](#), 63% of white Americans can afford to buy the typical home, compared with 43% of Black Americans and 54% of Hispanics.
- The homeownership rate among Latinos reached 49.7% in the first quarter of 2023 but is about 25 percentage points lower than that of non-Hispanic white Americans, [according to U.S. Census data](#). Advocates say that low rate is a warning sign for the nation's financial future because the Latino population in the U.S. is projected to grow [by 12 million every decade](#) until 2060.
- Census Bureau data says that about 48% of white residents can afford to buy the typical home in Colorado, compared with 30% of Black residents and 32% of Latino people.
- In 2020, 73% of white Coloradans owned their own home, compared with 41% of Black Coloradans.

How do we know this bill does not go too far and could result in owners losing rights?

The goal of this bill is to reduce frivolous lawsuits to bring insurance back into the market, while not taking away any protections from consumers who have a legitimate claim. The bill provides homeowners with additional consumer protection measures by:

- Providing alternative means to resolve disputes faster, outside of a burdensome and time-consuming litigation environment;
- Ensuring that they have the right to pursue timely and effective remedies for construction claims, and that such remedies are fair to the homebuyer but do not prevent the construction of attainable multifamily for-sale housing options; and
- Giving them greater transparency about construction litigation related to their property.

How does this bill bring insurers back to the Colorado market?

In Colorado, the high costs and frequency of construction liability litigation related to condominium development has driven insurance companies to raise insurance rates for developers. In recent years, insurance costs for condominiums surged to 5.5% of a project's hard costs, which was more than 233% higher than multifamily rental home projects. Additionally, insurance providers have reported that insurance rates for



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condominium development in Colorado are four times higher than the rates they see in California.

Offering consumers alternative options to resolve defect issues outside of litigation will reduce the magnitude and frequency of claims, which should help to lessen insurance costs. Consequently, insurers should be more incentivized to return to the Colorado market.

How are smaller, mom-and-pop businesses in the construction industry affected by litigation?

Businesses in the construction industry are mostly small businesses. According to the U.S. Chamber of Commerce Institute for Legal Reform's [Tort Costs for Small Businesses](#), certain industries are inherently riskier and may have more exposure to liability claims, and the price of tort liability is highest for small businesses in each industry.

For the construction industry, the price of tort liability for small businesses is \$30.77 per thousand dollars of revenue, with only the transportation, telecom and utilities industries incurring a greater cost of risk. In contrast, the price of tort liability is only \$8.82 or less for the manufacturing, retail trade, and wholesale trade industries.

How does this bill contribute to state goals and benefit local communities?

Governor Polis has called for the state to leverage policies to increase density in certain areas, and this bill does that because condominiums are a higher-density development that use less land and natural resources, creating a positive impact on the environment.

With improved neighborhood connectivity to transit corridors, condominiums provide an opportunity for more Coloradans to live in communities closer to where they work, reducing commute times and GHG emissions from individual cars.

According to the Urban Land Institute's [Higher-Density Development-Myth and Fact](#), higher-density development – like condominiums – provides local communities with the following benefits:

- It offers the best solution to managing growth, improving air and water quality, and protecting open space.
- It places new development into already urbanized areas that are equipped with basic infrastructure like utility lines, police and fire protection, schools, and



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shops, eliminating the financial and environmental costs of stretching those services farther and farther out from the core community.

- It reduces driving and smog and preserves the natural areas that are assets of the community: watersheds, wetlands, working farms, open space, and wildlife corridors.
- It redirects investments to towns and cities and revitalizes existing communities by creating more walkable neighborhoods with access to public transit, hiking and biking trails, which is vital to preserving a healthy environment and fostering healthy lifestyles.



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What is the Issue with Condos?

ABOUT: Colorado has a housing affordability crisis and [SB24-106](#) offers a balanced solution to reform construction liability litigation and still protect the rights of homeowners, provide additional housing choices, maintain high standards for construction professionals, and help reduce building costs to produce attainably priced homes...ultimately creating more homeownership opportunities for Coloradans.

THE ISSUE: LOSS OF CONDO CONSTRUCTION LEADS TO HIGHER HOME PRICES DUE TO LACK OF SUPPLY AT A TIME WHEN DEMAND IS INCREASING

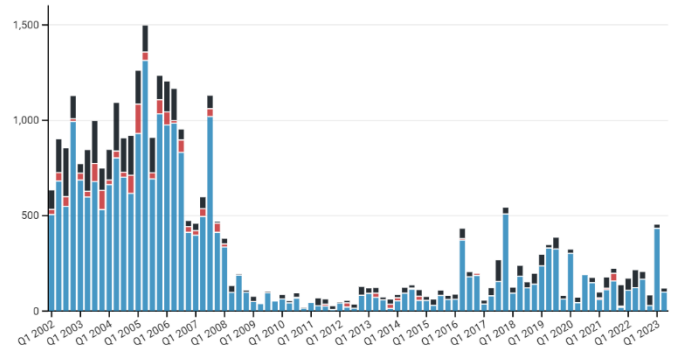
- ❖ Colorado's population has grown over 20% since 2008, and supply of condos hasn't kept pace with demand, which has driven up costs for one of the more affordable housing products.
- ❖ The estimated housing deficit in the Denver Metro Area for 2023 ranged between 45,025 and 115,012 housing units.
- ❖ As reflected in the graph, fewer mid-priced condos are being built, in large part due to concerns about how construction defect laws increase legal risks associated with condo projects.
- ❖ Quick Facts:

- In 2005, the majority of new & existing condos were priced under \$300k.
- By 2023, only 2% of new condos built were priced under \$300K due to lack of supply and mid-point price for condos in Denver Metro area was \$418K
- With Coloradans' average salary of \$56K/year, homeownership of this housing option is out of reach.

Condominium Starts across the Front Range

Quarterly numbers of condo starts across 11 Front Range counties

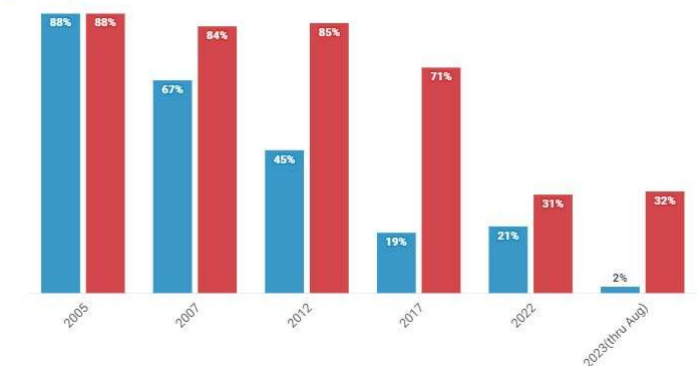
■ Metro Denver (Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Elbert, Jefferson) ■ Colorado Springs (El Paso)
■ Northern Colorado (Larimer, Weld)



Source Data: Zonda

Share of Condo Sales Under \$300,000

■ For Sale ■ Resale



Source: Zonda



Learn more: <https://homeownersopportunity.org>



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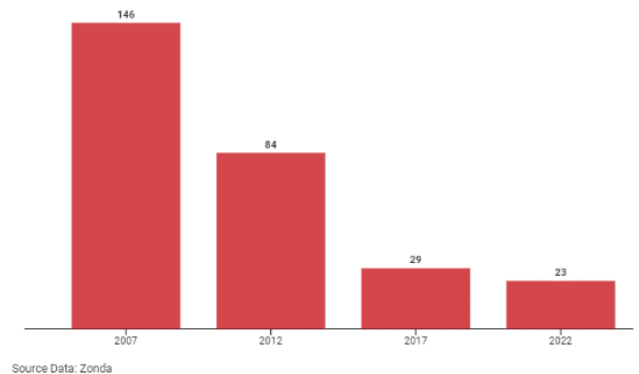
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WHY THIS IS HAPPENING: THE IMPACT OF CONSTRUCTION LIABILITY LITIGATION ON CONDO CONSTRUCTION

- ❖ According to a [KOAA News Story](#), the cost to insure a multi-family housing development in Colorado is approximately 4x greater than in California.
- ❖ A report from Zonda, a housing market research firm, shows insurance costs for single-family home projects can average between 1.1% to 1.65% compared to 5.5% for condo construction. Builders and developers say the increased insurance costs are because of construction liability or “defect” lawsuits.
- ❖ The Zonda report also found the number of unique condominium developers dropped from 146 in 2007 to 23 in 2022.
- ❖ Without reform to construction liability litigation, builders and developers will not be incentivized to return to the market to build much needed middle housing in Colorado.

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.



WHY CONDOS: THE BENEFITS OF THIS KIND OF HOMEOWNERSHIP OPPORTUNITY

- ❖ Condos provide for-sale housing alternatives to diverse populations that maintain a healthy housing continuum.
 - Groups such as:
 - Minority communities – primary means of accumulating wealth and closing the racial wealth gap
 - Individuals with disabilities – provide access to smaller, more affordable housing closer to places of work and public transit
 - Seniors, Retirees, Empty Nesters – downsizing opportunities to live close to family members and cut down on housing expenses
 - Essential workforce (teachers, nurses, grocery store clerks, first responders, etc.) – opportunities to live and work in the community they serve
 - Young professionals & first-time homebuyers – options to enter the housing market and build equity
- ❖ Condos provide a housing option with environmental benefits, including:
 - Improved connectivity to transit corridors
 - Opportunities to live closer to job sites which reduces commute times and GHG emissions from individual cars

Learn more: <https://homeownersopportunity.org>



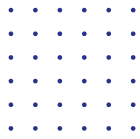
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What is the Issue with Condos?

- New development in already existing urban areas equipped with basic infrastructure like utility lines, police & fire protection, schools, and shops – eliminating the financial and environmental costs of stretching services outside of the community
- Redirected investments to towns & cities, revitalizing existing communities by creating more walkable neighborhoods with access to public transit, hiking & biking trails, which are vital to fostering healthy lifestyles.

Learn more: <https://homeownersopportunity.org>



WHY REFORM CONSTRUCTION LIABILITY LITIGATION NOW?

AS REPORTED BY THE DENVER BUSINESS JOURNAL:
ACCORDING TO THE COLORADO POLLING INSTITUTE

63%

of voters – homeowners and renters – expected Colorado will become a worse place to purchase a home.

“
These rising costs can be too much for new homeowners to afford.”



KRDO13 abc

“According to the Pikes Peak Regional Building Department (PPRBD), in 2021, 56 condos were built. The next two years that number went down to zero.”

VailDaily ”

Condo construction, once on par and even more abundant than new apartment buildings along the Front Range, dropped significantly following the Great Recession. While other types of housing in the state have rebounded since then, new condos haven't.

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Proponents of easing Colorado's construction defects laws, including Gov. Jared Polis, see the change as a way to persuade builders to construct more homes that middle-income Coloradans can afford.

WHY NOW? CHECK THE RECENT HEADLINES



RESEARCH SHOWS COLORADO AT BOTTOM OF HOUSING AFFORDABILITY RANKING

“Consumers' ability to afford a home in Denver and throughout Colorado continues to decline, according to a new report.”



COLORADO'S LARGEST COUNTIES SEE POPULATION DECLINE, EXPERTS POINT TO AFFORDABILITY

“Affordability has become a problem facing some counties despite population growth, with affordable homes out of reach for people whose wages remain stagnant, Tatiana Bailey, executive director at Data-Driven Economic Strategies said. “Colorado Springs, in El Paso county, is an example of a city where affordable housing has become a big issue.”

COLORADO NEWSLINE



POLL FINDS STRONG SUPPORT FOR COLORADO HOUSING IDEAS BACKED BY DEMOCRATS

“Colorado now has the fifth highest housing costs in the country, and the reality is many people can't afford a roof over their head, no matter how many hours they are working.”



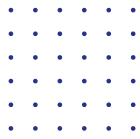
COLORADO

Governor Jared Polis

Office of Operations

GOVERNOR POLIS RELEASES BOLD VISION FOR HOUSING AND TRANSIT IN COLORADO

“We have too many obstructions that get in the way of building more homes, especially starter homes.”



WHY NOW? CHECK THE RECENT HEADLINES

THE DENVER POST

**ARE MORE COLORADANS THROWING
IN THE TOWEL ON OWNING A HOME?**

“All the statistical reckoning isn’t to say that Colorado doesn’t face downward pressures on homeownership, chief among them a lack of affordability.”



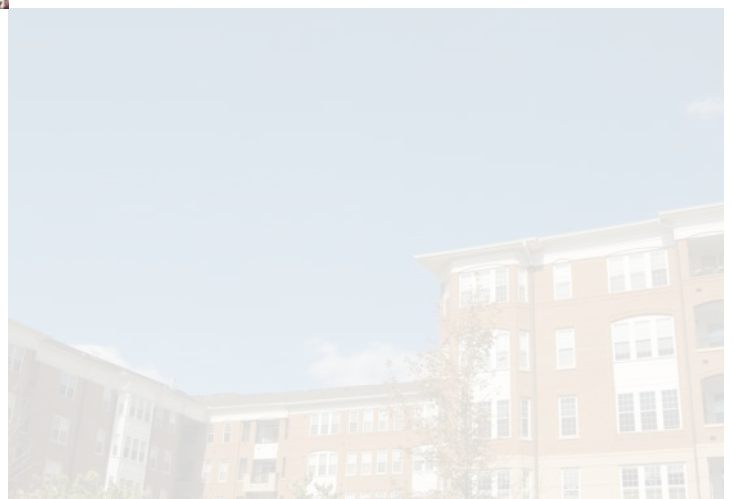
AXIOS Denver

THE MORTGAGE APP GAP, EXPLAINED

“Nearly 17% of U.S. Black mortgage applicants were denied in 2022, compared to 6.7% of white applicants in that same period, per the most recent data from the Consumer Financial Protection Bureau.”

coloradopolitics

Worried about the cost of renting and buying a home, Colorado voters are backing several concepts that lawmakers are exploring at the state Capitol, notably allowing what's called accessory dwelling units and ceding some local control.



WHY NOW? CHECK THE RECENT HEADLINES



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CONDO CONSTRUCTION IS DOWN, SOME SAY LAW CHANGE IS NEEDED

Dave Lemnah, Lokal Homes, “I had a quote come in for a recent project where we are bringing over 300 affordable homes to an area and the comment we got back from our insurance carrier...quotes are 4x the rates we see quoted in California.”



DEBATE SURROUNDING CONSTRUCTION DEFECT LAWSUITS LIKELY TO RETURN DURING COLORADO'S NEXT LEGISLATIVE SESSION

“...the cost to insure these projects is very expensive and that cost in turn is passed onto the buyers of the condos and townhomes making them more expensive for Coloradans.”

THE DENVER POST

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EDITORIAL: DENVER NEEDS MORE CONDOS WHEN A MID-RANGE METRO HOME COSTS \$625,000

"We supported two new laws in 2017 with the hope that tort reform would rebound condo construction. That has not occurred."



COLORADO'S 'CONSTRUCTION DEFECTS' LAW EXPLAINED

“We have received good bipartisan feedback so far and look forward to working with legislators to address construction litigation reform to help bring down the cost of housing and enable more opportunities to build wealth through homeownership”

Forbes

”

10 STATES PEOPLE ARE FLEEING AND 10 STATES PEOPLE ARE MOVING TO

Colorado ranked 7th of states people are fleeing: “High cost of living and out-of-reach real estate prices continue to drive would-be homebuyers out of the area...”