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The Construction Defect Action Reform Act (codified at C.R.S. §§ 13-20-801 et seq.; 13-80-104(1)(b)(II); 38-33.3-303.5) became effective on August 8, 2001. As its name suggests, the Act is meant to change the law in Colorado regarding construction defect actions.

While primarily meant to address multi-family residential construction defects claims, portions of the Act also are applicable to both commercial and residential construction defect cases. First, the Act requires any claimant who files a construction defect lawsuit or arbitration proceeding to also file a list of construction defects. Second, the Act alters the statute of limitations for filing a claim for contribution or indemnification.

I. Contractors are Entitled to a List of Defects

Generally, Colorado law does not require a person filing a lawsuit to provide much detail about his or her claim in the complaint. A complaint only needs to be detailed enough to put the defendant on notice of the subject matter of the lawsuit:

> A complaint need not express a complete recitation of all facts that support the claim, but need only serve notice of the claim asserted. . . . Indeed, the chief function of a complaint is to give notice to the defendant of the transaction or occurrence that is the subject of plaintiff's claims. Fluid Technology, Inc. v. CVJ Axles, Inc., 964 P.2d 614, 616 (Colo. App. 1998).

Under this standard, a plaintiff suing for defective construction does not have to specify the defects in the complaint. But the Construction Defect Action Reform Act now requires such a list. (C.R.S. §§ 13-20-801 et seq.) At least sixty days after filing a lawsuit alleging a construction defect, the plaintiff must file with the court a list describing the construction defects, and send a copy of the list to the defendant. Without this section, it could take months through the costly pleading and discovery process for a defendant to compel the plaintiff to produce such a list.

Since the plaintiff is allowed to freely amend the list as new defects are discovered, and the only penalty for failing to submit the list is that the case cannot be set for trial until the list is submitted, the true impact of this section will be to aid in settlement, focus discovery, and allow the defendant to determine early on what third-party defendants should be added.

If a third-party defendant (such as a subcontractor or supplier) is added to the lawsuit, the party bringing the claim against the third-party defendant must also file

a list of construction defects and serve it on the third-party defendant. The Act, however, provides no penalty for failing to provide the initial list when adding a third-party defendant.

II. Indemnity Claims May Wait

The list that the plaintiff is now required to furnish will help defendants, such as general contractors, decide what other parties involved in the construction project may be liable for the defects. Another section of the Act will help defendants decide when to pursue recovery against such parties.

The statute of limitations applicable to construction defect claims previously provided that all actions, including any and all actions in tort, contract, indemnity or contribution, arise at the same time. See Nelson, Haley, et al. v. Garney Companies, 781 P.2d 153, 155 (Colo. App. 1989). As a result, general contractors, when sued by owners for construction defects, had to add any other potentially responsible parties (subcontractors, suppliers, manufacturers, designers, etc.) as parties to the lawsuit, or risk having the statute of limitations for contribution and indemnification claims run out during the course of the lawsuit with the owner. This made defect cases larger and more complex than they otherwise might be.

The general assembly has now provided a ninety-day window of opportunity to bring contribution and indemnity claims:

> [A]ll claims, including but not limited to indemnity or contribution, by a claimant against a person who is or may be liable to the claimant for all or part of the claimant's liability to a third person:
>
> (A) Arise at the time the third person's claim against the claimant is settled or at the time final judgment is entered on the third person's claim against the claimant, whichever comes first; and
>
> (B) Shall be brought within ninety days after the claims arise, and not thereafter. (C.R.S. § 13-80-104(1)(b)(II))

With this section, it will no longer be necessary for general contractors sued for defective construction to immediately bring third-party claims against subcontractors and suppliers. They now have a ninety-day window of opportunity after final judgment or settlement of a construction defect claim to seek recovery from subcontractors and suppliers.

But this section could create hardship for general contractors who settle owner defect claims before a lawsuit is filed. In such a case, the general contractor arguably has only ninety days to seek recovery from any potentially culpable subcontractors and suppliers.

III. Conclusion

The Construction Defect Action Reform Act is a step in the right direction. The major advantage is the requirement that the plaintiff in a construction defect case produce a list alleged defects within sixty days of filing the lawsuit. This requirement, it is hoped, will eliminate delays in learning what the defects are, streamline discovery, allow defendants to determine what other parties should be,

or should not be, added as third-party defendants, and help foster settlement of construction defect claims. The change to the indemnification statute of limitations should simplify defect claims if for no other reason than there should be fewer peripheral parties in cases.

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