

February 25, 2017

Colorado State Legislature
Senate Business, Labor and Technology Committee

sent via email to:
Jeanette.Chapman@state.co.us

RE: SB 156 – Homeowners’ Association Construction Defect Lawsuit - NAMIC’s written testimony

Dear Senator Tate, Chair; Senator Neville, Vice Chair; and honorable members of the Senate Business, Labor and Technology Committee:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to the Senate Business, Labor, and Technology Committee for the February 27, 2017, public hearing.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country’s largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly \$225 billion in annual premiums. NAMIC has 163 members who write property/casualty in the State of Colorado, which represents 45% of the insurance market.

NAMIC appreciates and agrees with the bill sponsors’ laudable desire to reform the construction defect litigation process as it relates to common interest community ownership, and respectfully submits the following comments, concerns, and suggested recommendations for SB 156:

- 1) NAMIC supports the proposed requirement in the bill that mediation or arbitration must take place in the judicial district in which the community is located, because this provision is consistent with the Colorado Rules of Civil Procedure on legal venue for causes of action.
- 2) NAMIC also fully supports the proposed requirement that an arbitrator must: 1) Be a neutral third party; 2) Make certain disclosures to the parties before being selected; and 3) Be selected as specified in the common interest community's governing documents or, if not so specified, in accordance with applicable state or federal laws governing mediation or arbitration. NAMIC supports these proposed requirements, because arbitrators need to be objective, neutral third-parties, who do not have any conflict of interest in the claim. Further, the proposed requirement that the arbitrators make certain disclosures to the parties before arbitration promotes informed consumer choice, which is beneficial to all interested parties. Additionally, NAMIC supports the proposed requirement that the arbitrator selection and arbitration process comply with the terms of the agreed-upon common interest community's governing documents and state or federal law.

Requiring parties to comply with their legally enforceable agreements is sound public policy and protects the reasonable expectations of the contracting parties.

3) NAMIC also supports the proposed requirement that in the arbitration of a construction defect action, the arbitrator is required to follow the substantive law of Colorado with regard to any applicable claim or defense and any legal remedy granted. Since the property subject to the construction defect legal action is situated in the state of Colorado, it is reasonable and appropriate for Colorado law to be controlling to protect its citizens.

4) NAMIC supports the proposed requirement that the common interest community board be required to provide advance notice to all unit owners, together with a disclosure of the projected costs, duration, and financial impact of the construction defect claim before any legal action by the board may be undertaken. NAMIC believes that unit owners deserve and need to be informed of key information, which could influence their decision as to whether or not to support or participate in the construction defect litigation. NAMIC also believes that it is prudent to require the board to secure written consent of at least a majority of the owners of units before asserting any construction defect litigation, so that it is clear that the common interest community board is, in fact, asserting a legal claim with reasonable permission of its collective body of unit owners.

5) Although NAMIC supports most of the provision in SB 156, we do have concerns with the mandated mediation requirement in Section 4, because parties should have the right to decide whether or not mediation, based upon the circumstances and facts of the case would be a reasonable and potentially productive use of the parties' financial resources, and would not adversely impact the a party's cause of action or legal defenses. Mediation may be a valuable form of alternative dispute resolution in some cases, but it also may be used for improper tactical litigation reasons that may adversely impact a party. NAMIC believes that the decision to participate in mediation or arbitration should be left to the discretion of the parties and mutually agreed upon by the litigants.

6) NAMIC is also concerned with the provision in the bill that prohibits common interest community unit owners from having the ongoing right to amend their by-laws and governing documents to remove the originally agreed upon requirement that the parties participate in mediation or arbitration of a construction defect claim. NAMIC believes that the parties should have the freedom of contract rights to decide that the ever-increasing cost of mediation or arbitration is such that it doesn't make sense for the unit owners and board to be required to participate in this form of alternative dispute resolution.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,



Christian John Rataj, Esq.
NAMIC – Senior Director of State Affairs -Western Region