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# Developer supports SB 177, not shoddy condo construction

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### Highlights:

- **SB 177 passes Senate committee.**
- **SB 177 addresses construction defect litigation concerns.**
- **SB 177 still has a long road ahead before it becomes law.**



D4 is developing the Denizen apartment community, which will be the first Platinum LEED apartment community in Denver. It will not be converted into condos, down the road, even if SB 177 passes.

Developer Chris Waggett is no fan of shoddy condo construction.

"Some of these stories from condominium defect plaintiffs are very, very heart-breaking," Waggett,



CEO of Denver-based **D4 Urban** development and chairman of the non-profit **Transit Alliance**, said on Thursday.

"I am not here as a defender of shoddy, recalcitrant builders and laggards in our industry; I think we need to get the laggards out of our industry," Waggett said.

Yet, he strongly supports **SB 177**, which late Wednesday was approved by the Senate Business, Labor and Technology committee.

It is the first legislative step in the long process that would make it more difficult for homeowners to sue for construction defects. It still needs to go to the full Senate and the House. before it could be signed into law by Gov. John Hickenlooper.

Even if it passes, it does not mean that developers will open the floodgates in constructing affordable for-sale condos.

"It's not a panacea," Waggett said.

However, the current system, which allows just a few members of an HOA board to sue a developer, without the knowledge of homeowners or an attempt to solve the problem outside of a courtroom, makes no sense, he said.

"We need balance," Waggett said.

Because only a handful of high-end condominiums are being built, housing prices have skyrocketed in the Denver area. Apartment rental rates are also at record levels.

D4, for example, is currently developing the 275-unit **Denizen** apartment community by the Alameda Light Rail Station near South Broadway and Interstate 25. The Denizen is expected to be the first Platinum-LEED certified apartment community in Denver. Waggett said he would like to develop condominiums to meet the huge demand for affordable housing, especially along transit lines. But he said he can't take the risk of being sued.

### **SB 177 highlights**

If SB-177 is adopted, among other things it would require:

- An attempt to first resolve the construction defect issue through arbitration or mediation;
- A 51 percent vote of the homeowners to sue;
- And full disclosure to homeowners of the costs of

## litigation

SB 177 would help resolve some of the “unintended consequences” of the current laws, according to Waggett and others contend.

It is especially important, as Denver is the most expensive city between the East and West Coasts, he said.

That hit home on recent snowy night when he addressed a group of mostly millennials along with a politician, an affordable housing expert, and a person opposing SB-177.

### **Millennial horrified by housing prices**

“During the Q&A period, one guy raised his hand and said that he moved here from New Mexico 10 years ago. He was as Democratic and liberal as can be. He said he makes \$80,000 a year, which let’s face it, is a pretty good income. But he said using the rule of three, he could only afford a \$240,000 home,” Waggett said.

That is about \$80,000 less than the average priced home in the Denver area.

“He said when he moved here 10 years ago, Denver was nirvana, but now it is too expensive. He said he would urge his friends thinking of moving here, to consider moving someplace else, because housing prices are too high.”

For example, average housing prices in both Phoenix and Salt Lake City are below \$200,000, he said. High housing prices also hurt economic development efforts to convince companies to move to and expand their workforces in Denver, he added.

Not everyone agreed with Waggett.

### **SB 177 called “un-American.”**

A group called Build Our Homes Right said the bill would “strip numerous rights from unfortunate Colorado homeowners who have purchased defective homes.

It went on to say that SB 177 would allow builders and developers to stack the deck against homebuyers by establishing unfair community governing rules, interfering in homeowner association governance and restricting homeowners’ ability to consult with experts to understand the construction problems they face.

"This proposal would allow builders who sell homes with dangerous problems like crumbling foundations, wet and rotting framing and structures that are not wind-resistant to shirk their responsibility to make it right," said Jonathan Harris, chairman of **Build Our Homes Right** and the owner of a defective condo in Denver.

"Without the ability to hire engineering and legal experts, my neighbors and I would never have been able to assess the problems in our complex – and we would have been stuck with the dangerous problems and the expensive bills," Harris continued.

A.J. Rose, a Douglas County homeowner association board member, which is in the middle of a massive reconstruction to fix expensive defects, agrees.

"Without the right to vote to change our builder-written governing declarations, our homeowners would have had to fix all the expensive problems ourselves even though they were a result of construction defects," Rose said.

"Passing a law to prevent homeowners from voting to change their governing documents is downright un-American if you ask me."



Developer Chris Waggett supports SB 177, not shoddy condo construction.

Waggett said such comments are totally off base.

### **SB 177 doesn't remove rights**

SB 177 does not remove any rights, including the ability to sue a developer, he said.

In fact, a developer that still owns condos that have not yet been sold, cannot participate in a vote to sue.

“Only the homeowners can vote,” Waggett said. “Nothing could be more democratic, open and fair. It calls for complete transparency.”

He also said that some opponents of SB 177 claim that the many in the current crop of luxury apartments being built, will eventually be converted into condos.

That is extremely unlikely, he said.

### **Current breed of apartments won't be converted to condos**

First, it is difficult to convert rental units into condos, because rental apartments are built and designed to have one owner, he said. The systems being installed in the Denizen, for example, would not accommodate individual owners of condos, he said.

Also, the trend is to build smaller apartment units, because rents are so expensive. Most condo buyers do not want to own a 725-square-foot, one-bedroom unit, he said. Also, he doubts that many lenders would want to make loans on such properties.

Finally, typically apartment developers put language in sales contracts saying that the units cannot be converted into condos for eight to 10 years.

“Contractors are scared to death of being sued,” Waggett said.

Waggett also said that is a shame that taxpayers voted to spend tens of billions of dollars for new light rail lines in the metro area, but no affordable, for-sale housing is planed to be built at light rail stations.

He also said that is telling that every mayor in the metro area, whether a Republican or a Democrat, is supporting SB 177.

One of them is Denver Mayor Michael Hancock.

Hancock said passing SB 177 would make progress in correcting the imbalance in home prices, “while providing options for home owners and builders that allow them to resolve their issues before resorting to lengthy and expensive legal action.”

One thing SB 177 does not do is give developers a free ride, Waggett said. In fact, he said that governments need to do more to catch construction problems early on.

"We need better inspections," Waggett said. "We need to catch problems during the construction stage."

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