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HOUSE BILL 1338

On April 20, 2007, House Bill 1338 known as the "Homeowner Protection Act of 2007" was signed into law by Governor Ritter. This legislation impacts the ability of residential construction industry professionals to limit their exposure to remedies for damages by express waiver or contract. H.B.1338 amends the Construction Defect Action Reform Act of 2003 by adding a provision indicating that any express waiver of any of the rights, remedies or damages provided by the Construction Defect Action Reform Act or the Colorado Consumer Protection Act are void as against public policy. As a result, construction professionals no longer have the ability to include many contractual provisions commonly found in construction contracts. For example, while the act does not affect an express warranty unless it is attempting to abrogate or limit claims for relief other than those available under the express warranty, it does void any waiver of implied warranties. Further, any attempts to limit or waive damages whether consequential, treble or otherwise are void. By prohibiting the construction industries ability to contractually limit their damage exposure, this bill will increase the exposure of construction professionals on residential construction projects.

H.B.1338 was enacted to preserve Colorado residential property owner's legal rights and remedies and would appear therefore to apply only to contracts with the homeowner itself. Thus, while any contract by a developer, general contractor, architect, engineer, or subcontractor, to the extent they contract directly with the residential property owner is affected, this bill should not affect contracts between the construction professionals themselves.

H.B.1338 also prohibits the construction industry from attempting to shorten, limit, alter or amend the statutes of limitation or repose as to shorten the time frame of exposure to such damages.

This bill affects any construction defect action or arbitration proceeding after April 20, 2007. H.B.1338 specifically provides that it applies only to "claims arising out of residential property" and specifically indicates it does not apply to sales of property or donations of property or services by charitable organizations. Finally, the section itself confirms that it does not alter or amend the limitations on damages contained in the Construction Defect Action Reform Act including the limitation on treble damages and attorney's fees.