



PLEASE OPPOSE SB20-093

Arbitration Requirements and Limits on Standard Form Contracts

The Homeownership Opportunity Alliance (“HOA”) has significant concerns that:

- ❖ SB20-093 will reverse the most positive impacts of HB-1279 and the *Vallagio* decision, which paved the way for a quintupling of vital condo construction since 2017.
- ❖ *Vallagio* affirmed the right of a developer to require that construction litigation disputes go to arbitration, and that the developer be consulted if a homeowner association wants to make a change to their governing documents.
- ❖ This brought a sense of predictability in the insurance market regarding the timing and process for dispute resolution. It did not guarantee an outcome.
- ❖ SB-93 reverses that predictability by subjecting contracts with arbitration clauses in them to litigation, and then potentially forcing all dispute resolution into court. This is costly and will drive insurance costs back up, which will impact housing costs and impact Colorado’s ability to develop attainable and affordable projects.
- ❖ ***Vallagio* brought certainty and predictability to construction litigation in two major ways:**
 - It eliminated the costs and fees associated with protracted fights about the arbitrability of construction disputes; and
 - It brought predictability to the outcome of the process (because arbitration—by virtue of its typical use of arbitrators with more relevant experience—encourages more consistent outcomes).
- ❖ **SB20-093 threatens the benefits flowing from *Vallagio* in two major ways:**
 - SB-93 forces the prospect of significant increases in litigation costs relating to the enforceability of arbitration agreements and, as such, is federally preempted.
 - Legislation that disfavors or discriminates against arbitration agreements is preempted by the Federal Arbitration Act (“FAA”). *See, e.g., Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S.Ct. 1421, 1426 (2017).
 - The bill intends to curb pre-dispute arbitration provisions.
 - The FAA preempts any state rule discriminating on its face against arbitration and “displaces any rule that covertly accomplishes the same objective by disfavoring contracts that (coincidentally) have the defining



features of arbitration agreements." *Kindred Nursing Centers Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1426, 197 L. Ed. 2d 806 (2017)

- Enacting a law that, at inception, has known enforceability issues ensures increased litigation concerning the enforceability of the same. This presents insurers with more uncertainty (in addition to increased litigation costs and fees), again driving up insurance prices.
- ❖ More broadly, the bill is going to make arbitration more difficult and more expensive for the very consumers the bill purports to help, all while introducing an extraordinary number of unintended consequences that are likely to have a far larger impact than any of the intended consequences possibly could (given the limitations imposed by the preemptive reach of the FAA).
- ❖ **Bottom line: As it pertains to the housing industry, the SB-93 upsets the certainty the *Vallagio* decision brought and, in doing so, will result in increased insurance costs, fewer multi-family housing starts, and a detrimental impact on the availability of attainable housing in Colorado.**
- ❖ In 2017, this legislature, including many currently elected legislators, fought and voted for fixes to our attainable and affordable housing crisis to promote building more attainable multi-family for-sale housing. SB-93 will undo that great work.

We respectfully request you vote NO on SB-20-093

Homeownership Opportunity Alliance Coalition

American Council of Engineering Companies of Colorado
American Institute of Architects – Colorado Chapter
American Subcontractors Association
Apartment Association of Metro Denver
Associated Builders and Contractors, Rocky Mountain
Associated General Contractors
Building Jobs 4 Colorado
Colorado Apartment Association
Colorado Association of Home Builders
Colorado Association of Mechanical & Plumbing Contractors
Colorado Association of REALTORS®
Colorado Bankers Association
Colorado BUILDS
Colorado Business Roundtable
Colorado Chamber of Commerce

Colorado Civil Justice League
Colorado Competitive Council
Colorado Concern
Colorado Contractors Association
Colorado Mortgage Lenders Association
Colorado Municipal League
Colorado Springs Business Alliance
Denver Metro Chamber of Commerce
Denver South Economic Development Partnership
Douglas County Business Alliance
Douglas County Commissioners
Downtown Denver Partnership
Economic Development Council of Colorado
Habitat for Humanity
Hispanic Chamber of Commerce of Metro Denver
Home Builders Association of Metro Denver
Hope Communities



Housing and Building Association of Colorado
Springs
Housing Colorado
Independent Bankers of Colorado
Independent Electrical Contractors
Mechanical Service Contractors Association of
Colorado
Metro Denver Economic Development
Corporation
NAIOP Colorado
National Electrical Contractors
NFIB—Colorado
Sheet Metal and Air Conditioning Contractors
~~Trade Alliance~~
Urban Land Conservancy