

125

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**The Colorado Supreme Court rules in *Vallagio at Inverness Residential Condo Association v. Metro Homes, Inc.***

By Ryan Klein

On June 5, 2017, the Colorado Supreme Court reached its long-awaited decision in *Vallagio at Inverness Residential Condo Association v. Metro Homes, Inc.* While this case alone will not cure the problems with construction defect litigation or jumpstart multi-family construction, it is an important step in the right direction.

In *Vallagio*, the defendant developer recorded a declaration that required mandatory arbitration for construction defect claims. The declaration also required the developer's consent to amend the mandatory arbitration provision. After the last unit sold, the developer turned the project over to the plaintiff association. At least 67 percent of unit owners voted to amend the declaration to remove the mandatory arbitration provision. The plaintiff association then filed a lawsuit against the defendant developer and general contractor for a number of construction defect claims. The defendants moved to compel arbitration based on the mandatory arbitration provision. The district court denied the motion, and the defendants appealed to the Colorado Court of Appeals. The Colorado Court of Appeals reversed and held (a) the consent provision did not violate the Colorado Common Ownership Interest Act ("CCOIA") and (b) Colorado Consumer Protection Act ("CCPA") claims could be subject to a mandatory arbitration provision. The plaintiff association appealed to the Colorado Supreme Court.

On appeal, the Colorado Supreme Court confirmed a consent provision to the removal of a mandatory arbitration provision in a declaration did not violate CCOIA. The Colorado Supreme Court also confirmed CCPA claims may be subject to a mandatory arbitration provision.

In light of *Vallagio*, developers and builders should consider or be mindful of the following:

- 1) Inserting mandatory arbitration provisions in declarations that require the consent of the declarant to remove them;
- 2) Expanding the scope of such mandatory arbitration provisions to include CCPA claims;
- 3) Remaining mindful any mandatory arbitration provision should not include potentially unfair procedures, such as where the developer selects the arbitrator without any input from the HOA;
- 4) Considering updates to the scope of mandatory arbitration provisions in consumer contracts to include CCPA claims; and
- 5) Given how the Colorado Supreme Court ruled in *Vallagio*, carefully considering whether consent requirements as to declaration provisions other than arbitration are appropriate.