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COLORADO

# NOTICE OF CLAIM

Checklist and Step-by-Step Guide

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*For Colorado Homeowners and HOA Boards Navigating Construction Defect Disputes*

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# Colorado Notice of Claim: Checklist and Step-by-Step Guide

When a Colorado homeowner or HOA board notices cracks in the foundation, water seeping through walls, a roof failing years ahead of its lifespan, or other signs that something went wrong during construction, the instinct is often to call the builder directly or hire a lawyer and file a claim. But Colorado law requires property owners to take a specific step first: the Notice of Claim. Sending it to the right parties, within the right deadlines, and with the right level of detail is not optional. Under the Construction Defect Action Reform Act (CDARA), C.R.S. §§ 13-20-801 et seq., a defective Notice of Claim, or no notice at all, can stop a legitimate construction defect case before it starts. This checklist and step-by-step guide walks Colorado homeowners and HOA boards through exactly what the **Colorado Notice of Claim construction defect** process requires, so the right steps are taken in the right order.

At Elkus & Sisson, P.C., our [Colorado construction defect attorneys](#) represent homeowners, HOA boards, and commercial property owners navigating construction defect disputes. We prepare and serve Notices of Claim, guide clients through the inspection and offer phase, and pursue litigation or arbitration when pre-suit steps do not produce a resolution.

## What Is the CDARA Notice of Claim?

CDARA establishes a mandatory pre-litigation procedure that applies to every construction defect claim in Colorado, whether the property is residential, commercial, or governed by an HOA. Before filing any action against a **construction professional** (defined under C.R.S. § 13-20-802.5(4) to include architects, contractors, subcontractors, developers, builders, engineers, and inspectors), a claimant must send a written **Notice of Claim** that describes the alleged defects in sufficient detail for the construction professional to understand the nature and scope of the problem.<sup>1</sup>

The Notice of Claim is not a demand letter and it is not a lawsuit. It is the required opening step in a structured dispute-resolution sequence. Its purpose is to give the construction professional a genuine opportunity to inspect the property, evaluate the defects, and make an offer to repair or compensate before litigation begins. Many construction defect disputes settle at this stage. Many do not. In either case, a properly prepared Notice of Claim strengthens your position.

For a broader overview of CDARA's framework, deadlines, and what to expect if the pre-suit process does not resolve your dispute, see the **Colorado CDARA guide for homeowners and HOAs**. This guide focuses specifically on the Notice of Claim process and provides the checklists and step-by-step structure that complement that overview.

## Before You Begin: Critical Deadlines

The Notice of Claim interacts directly with Colorado's statute of limitations for construction defect claims. Understanding this interaction before you send the notice is essential.

Deadline Rule	Residential	Commercial
Notice of Claim before filing suit	At least 75 days	At least 90 days

Statute of limitations (from discovery)	2 years	2 years
Statute of repose (from substantial completion)	6 years (up to 8 with late discovery)	6 years
Tolling upon timely NOC (C.R.S. § 13-20-805)	SOL tolled 60 days after NOC process ends	SOL tolled 60 days after NOC process ends

**CRITICAL DEADLINE WARNING**

You must send the Notice of Claim before the statute of limitations expires, not just before filing suit. If your limitations period expires before the NOC is sent, no Notice of Claim can revive the right to file. Do not wait until you are certain a defect is actionable. If you suspect construction defects, consult a Colorado construction defect attorney before your deadline window closes.

## The 8-Step Notice of Claim Process

The following steps reflect the statutory sequence under C.R.S. § 13-20-803.5<sup>2a</sup> and the practical requirements of the CDARA notice process.

### STEP

## 1

### Confirm Your Deadline and Gather Documentation

**What to do:** Before drafting the Notice of Claim, confirm the applicable statute of limitations for your specific claim. Document when you first discovered each defect (or when you reasonably should have discovered it). Collect purchase agreements, construction contracts, building permits, and any prior communications with the builder or contractor.

#### Step 1 Checklist: Pre-Drafting Confirmation

- Identify the date each defect was first discovered or should have been discovered
- Confirm the applicable statute of limitations has not expired (generally 2 years from discovery)
- Confirm the 6-year statute of repose from substantial completion of construction has not expired
- Locate and review the original construction contract and any warranty documents
- Locate and review the purchase and sale agreement
- Identify any arbitration clause or mediation requirement in the contract or HOA governing documents
- Gather permits, inspection reports, and any builder warranty documentation
- Obtain photographs, videos, and written reports documenting each defect

### STEP

## 2

### Identify All Construction Professionals to Notify

The Notice of Claim must be sent to every **construction professional** whose work may have contributed to the defects. Sending notice to the wrong party, or failing to send notice to a responsible party, can create procedural problems when litigation begins. Under C.R.S. § 13-20-802.5(4), the term includes all of the following:

#### Step 2 Checklist: Identify All Recipients

- General contractor who managed the overall construction project
- Subcontractors whose specific scope of work covers the area of the alleged defect
- Architects or design professionals whose plans or specifications are implicated

- Engineers (structural, mechanical, civil) involved in the project
- Developers or builder-vendors if different from the general contractor
- Inspectors who certified work that is now alleged to be defective
- **For commercial property:** Prior owners of the commercial property at the time the work was performed (per C.R.S. § 13-20-802.5(4))
- **HOA note:** Identify whether defects are in common elements (HOA's responsibility to notice) or in individual units (unit owner's responsibility)

*Practice tip: Check corporate records, the original building permit application, and subcontractor lists in the original construction contract to identify all parties. Missing a responsible subcontractor at the NOC stage may limit your recovery options later.*

**STEP****3****Draft the Notice of Claim**

The Notice of Claim is a written document that must describe the alleged defects in **reasonable detail**. Under C.R.S. § 13-20-802.5(5), the notice must include a general description sufficient to let the construction professional determine the general nature of each defect, including the type and location of the construction claimed to be defective and any damages claimed to have been caused.

**Step 3 Checklist: What the Notice Must Include**

- **Claimant identification:** Full legal name and address of the property owner or HOA filing the claim
- **Construction professional identification:** Full legal name and last known address of each recipient
- **Property description:** Address and legal description of the affected property
- **Defect description (for each defect):**
  - **- Type of defect:** e.g., water intrusion, structural failure, foundation movement, roof defect, mechanical system failure
  - **- Location of defect:** Specific location on the property (e.g., northwest exterior wall, master bath, unit 4B ceiling)
  - **- Nature of the failure:** What the construction professional did or failed to do that caused the defect
- **Damages claimed:** A general description of the damages, losses, or costs caused by each defect
- **Date of discovery:** When each defect was first discovered or observed

**Important:** You may amend a Notice of Claim to include construction defects discovered after the original notice was served, but you must otherwise comply with the full notice requirements for the

additional claims. Document newly discovered defects immediately and consult your attorney about whether a supplemental notice is needed.

STEP

4

## Serve the Notice of Claim

Method of service matters. Under C.R.S. § 13-20-803.5(1), the Notice of Claim must be served by one of two authorized methods:

- **Certified mail, return receipt requested.** Send to the last known address of each construction professional and retain the certified mail receipt and return receipt card. These are your proof of service.
- **Personal service.** Hand-deliver the notice to the construction professional, following standard civil process rules.

### Step 4 Checklist: Service Confirmation

- Use certified mail with return receipt requested, or personal service, for each recipient
- Send to the last known address of each construction professional
- Retain certified mail receipts and green return receipt cards for every recipient
- Residential:** Notice must be sent at least 75 days before filing suit
- Commercial:** Notice must be sent at least 90 days before filing suit
- Record the date of mailing or service for each recipient in your file
- Confirm that actual receipt within the time prescribed constitutes sufficient delivery under C.R.S. § 13-20-803.5(11)

STEP

5

## Respond to Inspection Requests

After receiving the Notice of Claim, each construction professional may submit a written request to inspect the property and the alleged defects. The inspection must be completed within **30 days** of service of the Notice of Claim under C.R.S. § 13-20-803.5(2). You must provide reasonable access to the property during normal working hours.

### Step 5 Checklist: Managing the Inspection

- Confirm receipt of any written inspection request in writing
- Provide reasonable access to the property during normal working hours within the 30-day window
- Do NOT make permanent repairs to the alleged defects before the inspection is

completed

- Attend the inspection yourself or designate a representative
- Take detailed written notes during the walkthrough, including each defect shown, its location, and the contractor's response
- Photograph each defect before, during, and after the inspection
- Do not allow destructive testing without a separate written agreement
- If the contractor misses or fails to schedule the inspection within 30 days, document the failure in writing

**Why this matters:** Making permanent repairs before the construction professional has had an opportunity to inspect is one of the most common procedural errors in construction defect claims. If repairs are made before inspection, the construction professional may raise spoliation of evidence arguments that could damage your case significantly.

**STEP 6 Evaluate Any Repair or Settlement Offer**

After completing the inspection, the construction professional has the following time periods to make a written offer under C.R.S. § 13-20-803.5(3):

Property Type	Offer Deadline	Your Acceptance Deadline
Residential	Approx. 30 days after inspection	15 days from receipt of offer
Commercial	Approx. 45 days after inspection	15 days from receipt of offer

A written offer to remedy must include: a report of the inspection findings; a description of the additional construction work necessary to remedy the defect; and a timetable for completion of the remedial work.

**Step 6 Checklist: Evaluating the Offer**

- Confirm the offer is in writing and includes all required elements
- Review the proposed scope of repair against your own expert's assessment
- Confirm whether the offer addresses all defects identified in the Notice of Claim
- Evaluate whether the repair timetable is reasonable and enforceable
- If accepting:** Send written notice of acceptance to the construction professional no later than 15 days after receipt of the offer
- If rejecting:** Document your rejection in writing and confirm the basis for rejection with your attorney
- Assess whether the construction contract requires mediation before proceeding to litigation if the offer is rejected
- If you accept an offer and the contractor fails to complete remediation per the timetable, you may file suit without further notice under C.R.S. § 13-20-803.5(7)

**STEP 7 Assess Whether Pre-Litigation Requirements Are Satisfied**

The CDARA notice process is a threshold requirement, but it is rarely the only pre-litigation obligation. Before filing suit, confirm whether any of the following additional requirements apply to your claim:

- **Mandatory mediation.** Many construction contracts and HOA declarations require good-faith mediation before any litigation. Review all governing documents.
- **HOA voting or member notification requirements.** In condominium and HOA communities, the board may be required to notify or obtain approval from unit owners before authorizing a

construction defect lawsuit. Colorado statutes and the HOA's own governing documents may impose procedural steps.

- **Mandatory negotiation periods.** Some contracts impose pre-litigation negotiation windows separate from the CDARA process.
- **Written modification of the NOC process.** Under C.R.S. § 13-20-803.5(8), you and the construction professional may agree in writing to modify the procedures and timelines of the notice process. Any such agreement should be reviewed by your attorney before signing.

*If any action commenced by the claimant fails to comply with the requirements of C.R.S. § 13-20-803.5, the action shall be stayed until the claimant has complied. Do not file suit until all CDARA and contractual pre-litigation requirements are confirmed satisfied.*

STEP

8

## Proceed to Litigation or Arbitration

If the CDARA pre-suit process runs its course without a satisfactory resolution, meaning no offer was made, the offer was rejected, or the accepted offer was not completed, the property owner may file a construction defect action. Whether the action proceeds in court or arbitration depends on the construction contract.

### Step 8 Checklist: Pre-Filing Confirmation

- Confirm the NOC process is complete (no pending inspection or offer window)
- Confirm the statute of limitations has not expired (remember: the NOC tolls it only during the process)
- Confirm all contractual pre-litigation requirements are satisfied
- Confirm whether the construction contract requires arbitration or permits court filing
- File or commence arbitration within the tolled limitations period
- Compile the complete NOC file: certified mail receipts, inspection notes, correspondence, photographs, and all written offers and responses

## HOA Boards: Special Considerations

Colorado HOA communities that experience construction defects in common elements face a distinct procedural landscape under CDARA. Before the board takes any formal action on a construction defect claim, confirm the following:

- **Authority to act.** Review the HOA's governing documents and Colorado statutes to confirm the board has authority to authorize a construction defect claim without a membership vote, or determine what vote threshold is required.
- **Who sends the NOC.** The HOA, not individual unit owners, typically sends the Notice of Claim for defects in common elements. Unit owners may have separate claims for defects inside their individual units.

- **Defects affecting multiple units.** In condominium communities, a single defect, such as a failing building envelope or roof system, may affect dozens of units. An HOA-organized claim is typically more efficient and cost-effective than parallel individual actions.
- **Reserve analysis.** The board should assess whether reserve funds are adequate to fund the CDARA process and potential litigation costs.
- **No premature repairs.** Do not authorize emergency or permanent repairs to any construction element that may be subject to a defect claim without first understanding the spoliation risk and consulting construction defect counsel.

*HOA boards in Denver metro communities should consult a Colorado construction defect attorney before any formal action is taken, before any communication is sent to the builder or contractor, and before any repair work is authorized on potentially defective common elements.*

### Quick Reference: CDARA Notice of Claim Timeline

Phase	Residential	Commercial
Step 1-4: Draft and serve NOC	At least 75 days before filing	At least 90 days before filing
Step 5: Inspection window	Approx. 30 days after NOC	Approx. 30 days after NOC
Step 6: Offer window	Approx. 30 days after inspection	Approx. 45 days after inspection
Step 6: Acceptance deadline	15 days from receipt of offer	15 days from receipt of offer
Step 7-8: If no resolution	Litigation or arbitration	Litigation or arbitration
Tolling of SOL (C.R.S. § 13-20-805)	60 days after NOC process ends	60 days after NOC process ends

*Note: These timelines reflect the general statutory framework under C.R.S. § 13-20-803.5. Actual timelines in your case may vary based on the number of parties, the complexity of the defects, and the terms of any construction contract or HOA governing document.*

## Making the Most of the Notice of Claim Process

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How you manage the Notice of Claim process affects not just whether you can file suit, but what your legal position looks like when you do. The steps you take, and those you skip, create a record that follows the case through arbitration or trial.

**Documentation quality determines your options.** A Notice of Claim built on thorough expert reports, detailed photographs, and precise defect descriptions forces the construction professional to respond specifically to each item. Vague notices invite vague offers. The specificity of your notice sets the floor for any settlement discussions.

**The inspection is a two-way opportunity.** The inspection window gives the construction professional access to your property, but it also gives you access to their evaluation process. A property owner who attends with their own expert and takes contemporaneous notes creates a stronger record than one who grants access and steps aside.

**Offer evaluation is a legal analysis, not a negotiation judgment.** Whether a repair offer adequately addresses the defect involves questions of scope, methodology, and cost. Your own engineer or contractor can assess whether the proposed remedy will actually work. Your attorney can evaluate whether the offer's terms protect your right to pursue additional remedies if the repair fails.

**The statute of limitations is always running.** The NOC process tolls the statute of limitations only once the notice is sent and only for the duration of the process plus 60 days. If the pre-suit process consumes time and no notice was ever sent, the clock never stopped.

*Sending the Notice of Claim is the beginning of the process, not the end of it. What happens between notice and filing determines the strength of the claim that follows.*

Colorado's construction defect pre-suit requirements are specific, deadline-driven, and unforgiving of procedural errors. [Elkus & Sisson, P.C.](#) assists homeowners, HOAs, and contractors at our [Colorado office locations](#) with construction defect notice of claim requirements, CDARA compliance, and defect litigation.

If you have questions about the Notice of Claim process or your construction defect claim, [contact us](#) or call [+1 303-567-7981](tel:+13035677981) to schedule a free consultation.

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### References

[1] Colorado Construction Defect Action Reform Act (CDARA), C.R.S. §§ 13-20-801 et seq., Colorado General Assembly | <https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-13.pdf>

[2] C.R.S. § 13-20-803.5 (Notice of Claim Process), Colorado General Assembly | <https://leg.colorado.gov/sites/default/files/images/olls/crs2023-title-13.pdf>