

**60-4709. Association action for construction defects in common-interest community; majority vote.** (a) An association may bring an action to recover damages resulting from construction defects in any of the units, common elements or limited common elements of the common-interest community only:

(1) Upon a vote of the units' owners to which at least a majority of the votes of the members of the association are allocated; and

(2) upon a vote of the executive board of the association.

(b) An association or an attorney for an association shall not employ a person to perform destructive tests to determine any damage or injury to a unit, common element or limited common element caused by a construction defect unless:

(1) The person performing the tests is someone in the business of performing such tests and analysis;

(2) the person performing the tests has provided a written schedule for repairs;

(3) the person performing the tests is required to repair all damage resulting from such tests in accordance with state laws and local ordinances and codes relating thereto; and

(4) the association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests.

(c) An association may commence an action only upon a vote or written agreement of the owners of the units to which at least a majority of the votes of the members of the association are allocated. In such a case, the association shall provide written notice to the owner of each unit of the meeting at which the commencement of an action is to be considered or action is to be taken within 21 calendar days before the meeting.

(d) In the absence of a contractual provision to the contrary, the executive board of an association, without giving notice to the units' owner's, may employ a contractor and such other persons as are necessary to make such repairs to a unit or common element within the common-interest community as are required to protect the health, safety and welfare of the units' owners.

**History:** L. 2003, ch. 74, § 9; July 1.