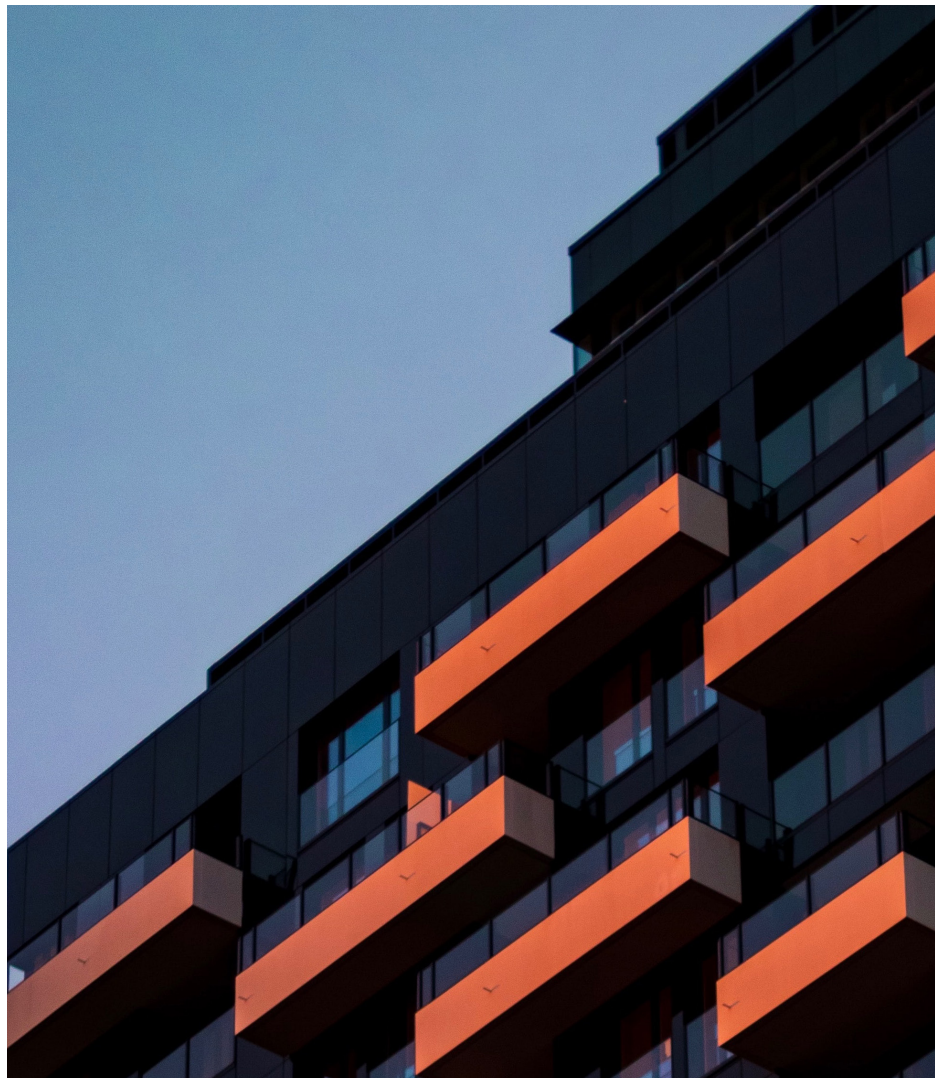




CONSTRUCTION DEFECT LITIGATION, HOUSING AFFORDABILITY, AND HOMEOWNERSHIP IN HAWAII

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Executive Summary

Hawai'i faces a severe housing shortage, driven by high costs and regulatory barriers that hinder new development. One emerging factor is the rise of construction liability litigation. While issues like land use constraints, infrastructure availability, and permitting delays have long been recognized as major challenges to housing affordability, litigation is becoming an increasingly significant source of uncertainty and risk in Hawai'i's housing market. This report examines how the resulting costs and risks borne by homeowners, builders, and insurers may contribute to higher housing expenses, project delays, and reduced future development. It does not evaluate the legal merits or demerits of these cases, only their economic implications.

We begin with background information on Hawai'i's housing shortage, construction defects, existing legal remedies, and recent proposals to amend the state's Contractor Repair Act. Trends based on public court records reveal that construction defect cases have grown larger and more frequent over the past 25 years, now impacting nearly 1,000 units per year on average—representing a significant share of the 5,000 homes built each year in Hawai'i. Public records also show settlements of tens and hundreds of millions of dollars, 30-40% of which is for legal costs and taxes.

Through 14 one-hour virtual interviews with experts in real estate, law, construction, insurance, finance, and appraisal, we next explore how litigation influences housing production. Stakeholders report significant impacts on costs of materials and builder's insurance, particularly for smaller, more affordable condo units, which face higher legal risks and slimmer profit margins. Homebuilders estimate that the cost of their insurance premiums have increased by up to 500% and litigation expenses by 200% in the past 20 years. Although litigation can be a crucial avenue for homeowners to address serious defects, these rising costs also risk diminishing housing affordability, both by raising prices and discouraging future development.

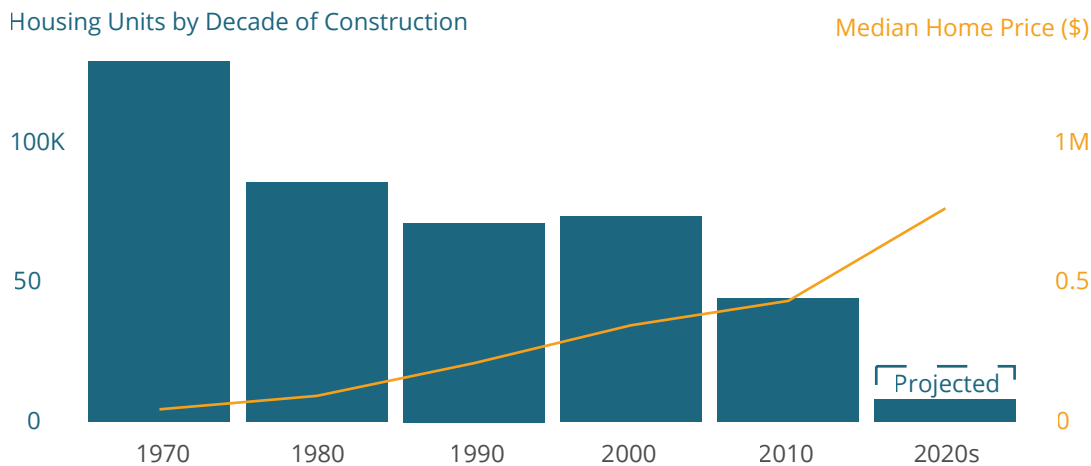
We also analyze the effects of litigation on housing consumption. Units under litigation are excluded from government programs like FHA loans, VA loans, and the secondary mortgage market. This makes financing harder to secure and more expensive for homebuyers: larger down payments, higher interest rates, and more stringent borrowing standards. Lenders report mortgage rate "adders" of 0.25%-0.5% to compensate for litigation risk. For an \$800,000 home with a 20% down payment, each 0.25% increase over current market interest rates adds \$100 per month to a mortgage payment, or \$36,000 over the life of the loan. First-time buyers and vulnerable populations in particular depend on public programs to access homeownership and may struggle to afford higher interest payments. Owners may also have trouble accessing their equity through second mortgages or HELOCs because of active litigation.

The report continues with two example cases to illustrate these impacts. The first uses public lending data to correlate a major lawsuit with reduced mortgage activity, while the second highlights ripple effects of a lawsuit on ongoing and future construction. These examples were reviewed by affected developers to ensure factual accuracy. We conclude with a discussion of considerations for policy reform.

1. Background

Hawai'i faces a severe housing shortage. While Hawai'i has the highest home prices of any state, developers are not providing adequate new housing supply to meet demand (Figure 1). During the 2010s, Hawai'i produced only 44,000 housing units, which was 40% fewer than the prior decade and nearly 70% fewer than the 1970s. Many factors increase housing costs and discourage developers from bringing new homes to market, including a restrictive regulatory environment (Inafuku et al., 2022).

Figure 1: Falling Housing Production and Rising Home Prices in Hawai'i



Data is from the 2023 5-year American Community Survey. Hawai'i's current housing stock shows how production has slowed over time. Demolitions are not accounted for, meaning historic production was even higher than captured here. The estimate for the 2020s assumes the pace of production observed in 2000-2023 continues.

Construction Defects, Building Codes, and Inspections

Construction defects are flaws or deficiencies in the design, materials, or workmanship of a building that may compromise its structural integrity, functionality, or aesthetics. These defects can emerge during or shortly after construction, or develop over time and may result from a lack of planning, material choice, improper construction techniques, inadequate inspection processes, or undetermined causes. The seriousness of defects ranges from merely cosmetic (such as peeling paint) to life and safety concerns (such as a structural weakness).

Construction defect liability is the legal responsibility builders, developers, architects, and contractors hold for repairing or compensating for construction defects, limited to a certain period determined by law called the *statute of repose*. Construction defect litigation is legal action filed against one or more of these parties alleging defects have occurred and seeking compensation. These claims may go to trial, but are more commonly settled without admission of fault when parties agree upon compensation or a repair plan.

To manage the risk of building defects in their jurisdictions, local governments adopt and enforce regulations that establish minimum standards for the design, construction, and maintenance of buildings to ensure structural integrity, safety, and resilience. These *codes* regulate a wide range of factors, including fire resistance, plumbing and electrical systems, energy efficiency, and wind and seismic loads. While national model codes, such as the International Building Code (IBC), serve as a foundation, each jurisdiction modifies them based on local conditions. In Hawai'i, county governments are responsible for enforcing building codes through the permitting and inspection process, ensuring that new developments meet legal requirements before occupancy.

However, these codes define only a baseline for compliance, not best practices, leaving room for disputes over construction quality. When defects emerge, lawsuits often fill gaps between standards and expectations, effectively shaping industry standards beyond what codes mandate—which in turn may form the basis for code updates.

Regulatory oversight begins with the permit review process, where county officials examine plans for compliance with local building codes before issuing approvals. However, this process can be slow and complex, often causing delays that increase costs for developers and create pressure to expedite construction once approval is granted. County building inspectors, who work for local permitting departments, conduct site inspections at key phases of construction, including foundation work, framing, and the installation of electrical and plumbing systems. These inspections help catch any major violations, but due to staffing shortages and high workloads, inspectors often spend only a short time at each site, focusing on code compliance rather than overall workmanship. As a result, while inspections serve an essential role in ensuring basic safety, they do not necessarily catch every issue that might later lead to litigation.

To mitigate risk, developers implement their own quality assurance and quality control (QA/QC) processes, which may include hiring independent third-party inspectors to assess workmanship and material performance. Large-scale projects, particularly those involving commercial lenders or insurers, undergo additional scrutiny from consultants hired to verify construction quality. Lenders, for example, may seek to protect their investment by commissioning engineering or architecture firms to ensure that work aligns with both loan agreements and industry standards. If litigation occurs, these evaluations and reports become key documents for the defense. Despite these multiple layers of oversight, construction defect litigation remains a significant factor influencing how developers, lenders, and insurers make investment decisions and evaluate risk.

Construction Defect Law and Process in Hawai'i

The Hawai'i Contractor Repair Act (CRA), codified in HRS Chapter 672E, establishes a structured framework for resolving construction defect disputes in residential properties through repairs and mediation rather than litigation. The statute aims to provide a more expedient and cost-effective alternative to court proceedings. Under the CRA, homeowners alleging construction defects must first submit a written notice to the contractor at least 90 days before initiating legal action. This notice must include a detailed description of the alleged defect as well as any relevant test results. Upon receipt, the contractor has 30 days to inspect the property and either:

1. Offer to repair the defect,
2. Propose a financial settlement, or
3. Reject the claim.

If the parties are unable to reach an agreement, they are required to engage in mediation before pursuing litigation. However, attorneys may seek to circumvent CRA requirements by arguing that its provisions apply only to individual claims and do not preclude mass litigation.

State law also imposes deadlines on defect-related claims. Homeowners or associations generally have up to ten years from the date of construction to initiate a claim (statute of repose). Once a defect is identified, claimants have two years to file a lawsuit (statute of limitations). In practice, to preserve their legal rights within these timeframes, many homeowners and associations pre-file lawsuits even as the CRA process remains ongoing. Courts typically stay these lawsuits until the CRA procedures are completed.

Pre-filing, however, introduces additional complexities. Instead of direct communication and negotiation between homeowners and developers, as envisioned by the CRA, legal representatives manage the dispute, resulting in legal costs. Furthermore, even stayed lawsuits must be disclosed

to insurers, lenders, and prospective buyers, potentially making it harder for homeowners to refinance or sell. Developers, in turn, may face difficulties securing capital for future projects.

Construction Defect Law and Reforms in Other States

Many states have recently amended their construction defect liability laws or are considering amendments, reflecting an ongoing effort to protect consumers without constraining housing development (Common Sense Institute, 2024; Alameldin & Karlinsky, 2025). California provides a representative example. The state has stringent construction defect liability laws intended to protect homeowners, but these have been criticized for discouraging condominium development due to high risk of litigation and increased insurance costs. Active proposals for reform include implementing a graduated statute of limitations for construction defects, establishing home warranty programs, and instituting a “right to repair” mechanism with mandatory binding mediation. These and other policy adjustments have been adopted in other states already, as described below.

Minnesota introduced a graduated statute of limitations in 2017 to provide different timelines for types of defects, intended to reduce the risk for developers while protecting homeowners (CHAPTER 87--H.F.No. 1538, 2017). For example, homeowners have one year to report defects in workmanship, two years for issues with major systems (such as electrical or plumbing), and ten years for major structural defects. Minnesota also requires mandatory mediation before a lawsuit can proceed, helping to resolve issues without extensive litigation. After the statute took effect, a study found multifamily construction in the state increased by 92% from 2014 to 2018, compared to 15% nationally (Housing Affordability Institute, 2023). Although production increased, the share of for-rent multifamily projects increased from 92% to 98%, limiting the effect of new housing on ownership levels.

Utah has addressed claims by narrowing legal standing to bring construction defect cases to the first owners after construction. The rationale is that these owners are in a direct contractual relationship with the builder or developer (known as “privity of contract”), but subsequent property owners are not. Utah also has a shorter, six-year statute of limitations for defect claims. Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, and Florida all also have statutes of repose of less than 10 years for construction-related claims.

Signed into law in 2017, Colorado House Bill 1279 required that homeowners’ associations (HOAs) obtain approval from unit owners before filing a construction defect lawsuit against developers, contractors, or other construction professionals. Florida Statute § 553.84 amended in 2023 limits liability for builders and contractors who followed all legal requirements and inspections unless they were aware of defects. Several states, including Alaska, Georgia, Idaho, and Texas, limit attorney’s fees and damages in construction defect disputes when claimants reject settlement offers. In Alaska, for example, those who unreasonably refuse a repair or monetary settlement cannot recover more than the proposed repair cost or offer amount and may be denied legal fees.

New Jersey established a state-managed New Home Warranty Program, which includes a ten-year warranty for structural defects, with shorter periods for issues with workmanship and major systems. Builders are required to repair defects within specific timelines, and if they fail to do so, the warranty program steps in to cover repair costs. This warranty, which is funded primarily through per-unit premiums on participating builders, reduces the need for homeowners to seek legal action directly against builders, as the program aims to ensure timely resolution and repairs. Canada also employs a system with mandatory warranty programs in certain provinces. Programs like Ontario’s Tarion Warranty Corporation fund defect resolutions through fees collected from licensing and home sales.

These strategies around the U.S. and Canada reflect a blend of mandatory repair opportunities, adjusted liability timelines, and alternative dispute resolution measures. States implementing these policies aim to lower the risks and costs associated with defect litigation, which may make it more viable for developers to produce affordable housing options.

Recent Reform Proposals in Hawai'i

Recently there have been increased efforts to address construction disputes in the state, but legislative proposals remain contentious. In 2023 the State Legislature overturned Governor Green's veto of SB921 to allow condo associations extended time to sue developers over construction defects beyond the 10-year statute of repose if developers retain control of condo boards (Relating to Limitation of Actions, 2023). A handful of other bills related to construction liability were introduced unsuccessfully in 2024, including HB2213, requiring claimants alleging construction defects to provide contractors with a more particularized notice of claim and establishing protocols for inspection, offers to settle or repair, and limiting claimant recovery if they unreasonably reject a contractor's offer to inspect or repair (Relating to the Contractor Repair Act., 2024).

SB2606 required that a claimant provide contractors with a more particularized notice of claim including specific descriptions of the alleged defects and supporting evidence, such as expert reports, photographs, or testing results (Relating to Construction, 2024a). SB2607 (Relating to Construction, 2024b) and SB2340 (Relating to Construction Defects, 2024), similar to HB2213, outlined the protocols for inspection, offers to settle or repair, and limiting the claimant's recovery if they unreasonably reject a contractor's offer to inspect or repair. These measures seek to further encourage resolution of defects outside of court by ensuring contractors have a chance to inspect and incentivizing contractors and claimants to early resolution of claims.

2. Litigation trends in Hawai'i

We collected records of construction defect litigation in Hawai'i through eCourt Kokua, a publicly accessible platform that provides free basic case information from the Hawai'i State Judiciary going back to 1994. This platform includes details such as plaintiffs, defendants, attorneys, case status, filing date, resolution date (for completed cases), and brief case descriptions. We began the search by identifying nine plaintiff attorneys frequently involved in construction defect litigation. We searched using attorney names rather than developer names because developers often operate under different names or LLCs for new projects, complicating direct searches in the eCourt Kokua system.

A comparison of case metadata and court filings with news stories and other public documents identified 57 distinct construction defect liability cases filed between 2001 and 2024 and none prior to 2001. We contacted listed defendants to verify the accuracy and completeness of the dataset. We then enhanced the dataset with additional public sources, such as building permits and condominium documents, to include construction start and end dates and estimate the number of units affected by each case where possible.

Condominium unit numbers were collected from the Department of Commerce and Consumer Affairs Developer's Public Report, while single-family unit numbers were gathered from developer and community websites, verified with the respective developer and further matched with case filings and class action websites when available.

Nonetheless, this approach has limitations. Construction defect complaints that are resolved without court filings—for example through mediation, arbitration, or mutual consent—will not appear in eCourt Kokua or any other public database. However, developers, lenders, and insurers will still factor the expenses associated with these actions into future financial calculations. Some affected units may not be represented and could not be identified due to unavailable case filings, challenges in matching case filings to specific communities, or incomplete information from

developers. Older cases brought by attorneys no longer in practice against developers no longer in business may have been missed as well. Analysis based on public records alone, therefore, will underestimate the frequency and cost of disputes, while possibly overestimating their average size (as larger cases are more likely to go to trial and be well-documented). These results should be interpreted as a conservative estimate of overall trends based on the largest and most significant construction defect actions.

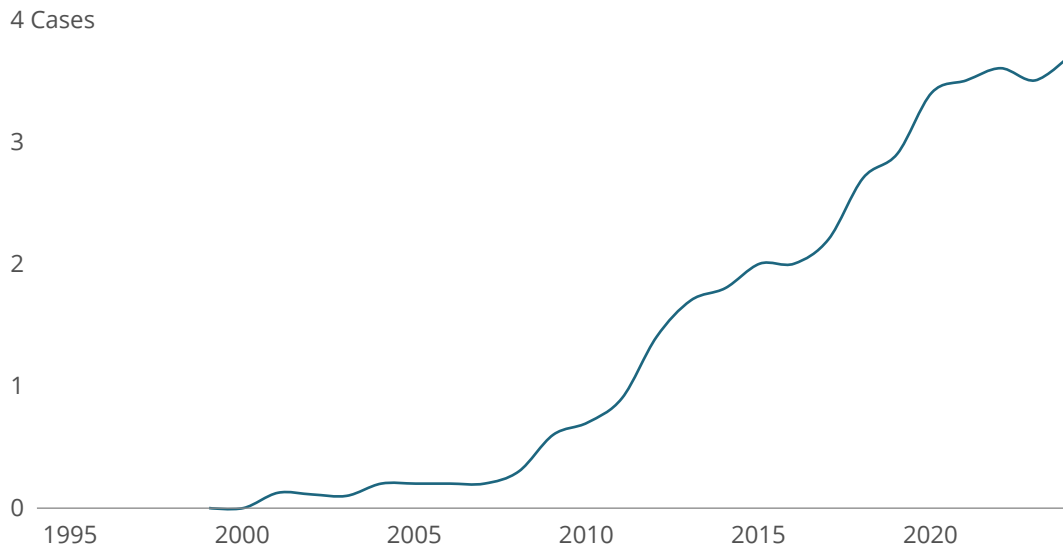
Public settlement documents from 3 class action lawsuits offer examples of the scope of these cases, as shown in Table 1. These 3 settlements alone totaled to \$113,503,443, with 40% (\$45,387,129) allocated to attorney fees, taxes, and other litigation expenses.

Table 1: Public Details of Select Class Action Construction Defect Suits

Case	Year Filed	Units Encumbered	Settlement (\$M)	% allocated to legal expenses and taxes
Nishimura v. Gentry Homes	2011	2,135	90.3	40
Mitsuoka v. Haseko Homes	2012	621	20	42
Otsuki Cieslak Revocable Trust v. Gentry	2024	74	3.16	29

Figure 2 shows the 10-year trailing average of construction defect cases filed over time from 2000 to 2024. A trailing average for a given year is the average number of cases filed over the previous 10 years. For example, the value for 2024 reflects the average number of cases from 2015-2024 and the value for 2023 reflects cases from 2014-2023. This is a more appropriate statistic for judging long-term trends than a simple annual count due to the statute of repose, which allows cases to be filed at any time within 10 years after construction. Between 2000 and 2009, there were 0-1 cases per year on average, rising to 2-3 in the 2010-2019 era and 3-4 since 2020. Note that, due to the 10-year statute of repose, there may still be future cases filed against developments built since 2014.

Figure 2: Average Cases per Year (10y Trailing Average)



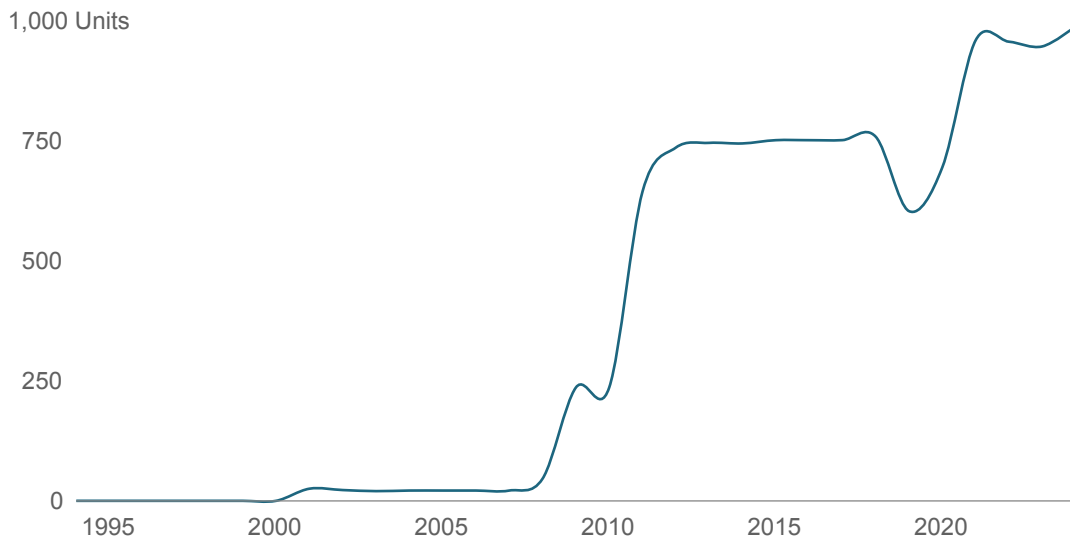
While cases were infrequent 2 decades ago, there is a notable upward trend beginning around 2010, and continuing through the present.

We further explored potential differences in trends between cases brought by homeowners associations and those brought by homeowners directly (class actions)¹. Of the 51 cases distinguishable by type from public records, 21 were brought by HOAs and 30 by class action. Both types have become more frequent over time. There were notable surges of class action cases in two periods: 2009-2013 (11) and 2018-2021 (11).

The number of cases alone, however, is insufficient to determine a rising trend. Some cases involve many units, some few, and attorneys might choose to pursue multiple smaller cases as opposed to one larger case for tactical reasons. To address these concerns, we attempted to count the number of units involved in each case, concentrating our research efforts on cases likely to have involved 100 units or more. These efforts yielded a verified total of at least 17,555 units encumbered by construction defect litigation from 33 unique cases during the study period.

Figure 3 shows the 10-year trailing average of newly encumbered units affected by construction defect litigation over time. Similar to Figure 2, a 10-year trailing average was applied to accurately reflect the trend in the number of units involved in litigation relative to the statute of repose. We find that major cases are not only becoming more frequent, but larger in scale. On average, 34 more units are involved in construction defect litigation every year. Spikes in recent years such as 4,287 units in 2011 and 6,935 units in 2021 suggest that construction defect cases now encompass larger developments, such as high-density condominiums, and impact more households per case.

Figure 3: Newly Encumbered Units per Year (10y Trailing Average)



The number of units encumbered annually by construction litigation cases has significantly increased.

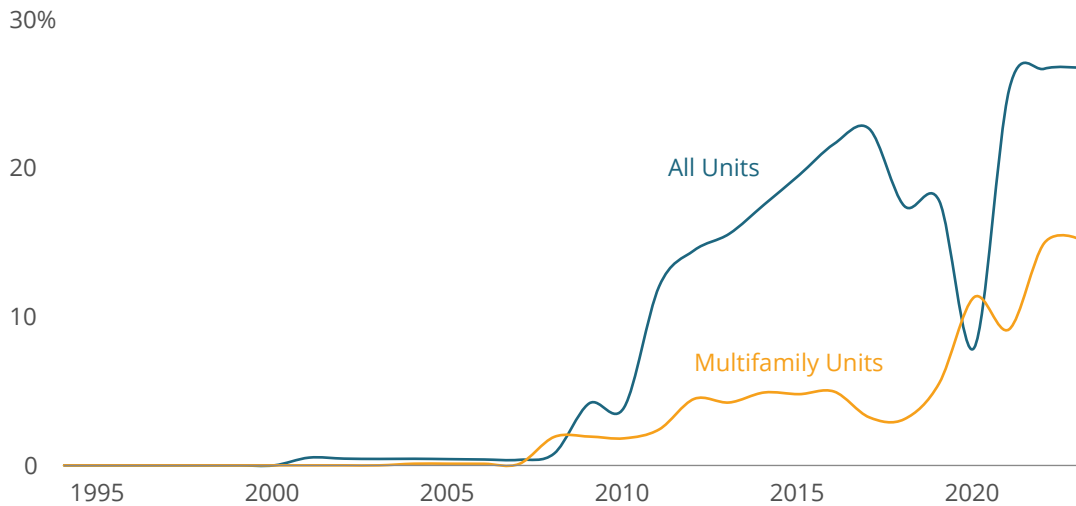
Over this same period, overall housing production has been falling steadily, as represented in Figure 1, meaning that an increasing share of all homes built is involved in litigation. To illustrate this, we link our unit counts with building permit data from the U.S. Census (U.S. Census Bureau, 1990-2023). We find that in 2 of the last 15 years, the number of units encumbered by construction defect litigation exceeded the total number of units built: 2011 (2,743 built vs. 4,287 encumbered) and 2021 (3,459 built vs. 6,935 encumbered).

Figure 4 provides two approximations of the share of units involved in litigation. The first divides the average number of units involved in cases in the last 8 years by the average number of units built in the last 10 years. The difference in time period is to account for the fact that lawsuits in our dataset are rarely filed in the first 2 years after construction. The second, more precise

¹ For simplicity, we refer to a range of collective governance structures and acronyms (AOAO, AOOU, AOHO, condo associations, etc.) as HOAs in this report. For litigation purposes, the key distinction is a suit brought by an association of owners versus a class, which alters the legal risk calculus as described in the Strategic Adjustments section below.

measure divides units encumbered in HOA cases by the number of units built in multifamily buildings (5+ units). Neither of these are perfect measures, as not all lawsuits occur evenly across that window. Some defects may be discovered and litigated early, while others arise later. A simple trailing average does not account for this potential variation in lawsuit timing. Despite these limitations, using this method we find that about 1 in 6 multifamily units (15%) built between 2013 and 2023 have been involved in litigation—up from 1 in 25 in the period 2003–2013. Once we include class action cases, which tend to be larger, about 1 in 4 units (27%) built statewide during the period 2013–2023 have been involved in litigation, up from 1 in 6 (16%) in the previous 10-year period. Taken together, these findings show that construction defect litigation is becoming more frequent in Hawai'i from multiple perspectives: cases, units, and share of units.

Figure 4: Units Encumbered as a Share of Units Built (Trailing Average)



An increasing share of newly built units are involved in construction defect litigation. Between 2013 and 2023, approximately 15% of multifamily units and 27% of all new homes were affected—up from 4% and 16%, respectively, in the previous decade.

3. Potential impacts on hard and soft costs

Both hard costs, such as materials and labor, and soft costs, including legal fees, builder's insurance, and project delays, may increase due to the legal and financial complexities brought on by defect claims. This section examines the effect of construction defect liability litigation on hard and soft costs, drawing insights from interviewees and economic theory. It also discusses the strategic adjustments that developers may make in response to litigation, investing less in higher-risk products, such as for-sale condominiums, and more in lower-risk ones, such as luxury apartments, hotel-condos, and for-rent projects.

Hard and soft costs are proprietary information not generally available in the public record. Therefore, to fulfill our scope (effects on housing affordability and homeownership) we depend on 14 one-hour interviews with industry experts who could attest to the economic impacts of these cases: developers, contractors, insurers, bankers, and experienced expert witnesses in construction defect proceedings. Interviewees were selected by snowball sampling beginning with local developers. Evaluating the legal merits of these cases is outside both the scope of this report and the capabilities of these researchers, and therefore we did not consult plaintiffs or

their attorneys. Where the public record was incomplete, in-house counsel for defendants was consulted to verify noncontroversial matters of fact concerning the developments and cases (construction start/end dates, filing and settlement dates, number of units affected, etc.) as described in the previous section. Interviews were open-ended, but we also sought to cross-verify information gathered through this method. Only claims that could be corroborated from both sides of a transaction (e.g. developers and their insurers concerning premiums, real estate agents and lenders concerning mortgage rates) are included.

Hard Costs: Material and Design Changes

Construction defect litigation most directly leads to changes in design and materials. Developers must update their practices not only in response to lawsuits filed against them, but also those filed against other developers in the same jurisdiction, either on their own initiative or as a requirement imposed by insurers or changes to code. In this way, adaptations quickly propagate through the local construction industry. Theoretically, a fast industry response can be a positive outcome if owners or associations file suit in response to a serious structural or life-safety issue, ensuring future owners will not experience the same issue. However, if owners sue over speculative or cosmetic defects, the costs to future owners in the form of defensive design and material changes may outweigh benefits.

These adaptations often entail using more durable and therefore more expensive materials than those specified in building codes. For example, developers report switching from plastic piping to copper and pouring foundations with higher-density marine concrete mixtures to minimize corrosion by reducing moisture. The future homeowner may benefit from a more resilient product that lasts longer but at additional upfront cost.

These changes have broader implications for housing affordability and homeownership as well. Because every project in an area tends to incorporate new practices at roughly the same time, the effect on new home prices is quick and nearly universal, while wages and salaries change more slowly, an instance of cost-push inflation that places the typical new unit further out of reach for the typical household. And because the costs of these upgrades as a share of the overall cost of the units increases as the intended sales price decreases, it reduces the economic viability of affordable developments relative to luxury ones.

Soft Costs: Litigation, Insurance, and Project Delays

Developers report and insurance representatives confirm that soft costs associated with construction have also risen sharply as a result of construction defect litigation. The majority of developers purchase insurance against these types of claims; however, in recent years, only 1-2 insurers have been active in the Hawai'i market at a given time. Limited competition and increasing litigation risk have led to stricter underwriting standards, higher premiums, higher deductibles, and lower coverage limits. Rising costs of construction materials has also increased the exposure base that the policies cover. The net result is that insurance expenses are reported to have increased by over 500% in the last two decades. These increases are passed through to homebuyers in the final purchase price.

Developers also report that the costs of defending against defect claims have surged by up to 200% over the last decade. This dramatic rise is not only due to increased legal fees but also to the costs of settlements and judgments, which have become larger and more frequent. They further assert that an increasing share of the units they build has been subject to construction defect litigation over the years, supported by Figure 4 above.

The difficulty of securing insurance may also affect housing affordability indirectly in at least two ways. First, it could serve as a barrier to entry if insurers are reluctant to take on even more risk by insuring a new, small, or otherwise unproven company against construction defect claims. Fewer firms means higher pricing power for existing firms and fewer active projects overall. Second, the large deductibles on insurance policies require developers to maintain large cash reserves for each project that might otherwise be invested in additional production. These developers may also exert more caution in the number, scale, and variety of projects they take on, as discussed in the next section.

Finally, for multi-stage projects that are still under construction when a legal action is filed, delays compound soft costs even further. In these cases, developers are forced to halt construction or defer the completion of units until legal matters are resolved, which generally takes years. These delays lead to increased labor costs, as contractors must be retained for longer periods, and financing costs as loans continue to accrue interest while projects remain incomplete.

Strategic Adjustments in Response to Litigation

The rise in litigation and its associated costs has prompted developers to make strategic adjustments to their business practices. Most developers have considered diversifying their portfolios, evaluating fewer for-sale housing units—particularly condominiums—and more commercial or rental developments. This shift is partly driven by the desire to avoid the legal risks associated with litigation initiated by homeowners and partly by the growing costs of securing insurance for traditional residential projects. Obviously, if all developers in a market transition a share of their business away from residential development, and no new developers enter, fewer units will be built.

For-rent projects are less risky because developers retain ownership of the property after construction and have no incentive to sue themselves. Among for-sale projects, condominiums are considered more legally risky than subdivisions. This is primarily due to condominium associations, which have the legal authority to file lawsuits on behalf of all individual unit owners within the development. This ability makes it a more powerful and coordinated plaintiff than individual homeowners acting independently or in a class.

In contrast, subdivisions typically involve individual homeowners who must sue separately or form a class for construction defects. This reduces the likelihood of large-scale, coordinated legal action compared to condominiums, where the association can file a single suit covering a wide range of defects that impact multiple units. Both the potential for collective action and broader claims make condominiums more susceptible to large-scale defect litigation, and therefore riskier to build, finance, or insure.

Horizontal condominiums, which look like traditional single-family neighborhoods but are legally structured as condominiums with shared land ownership rather than fee-simple subdivisions, are a common feature of Hawai'i's housing market. Developer decisions and insurance premiums originally priced in more risk in vertical condos, since individual units share in the collective risk of defects in common areas and the shared facade. Moreover, builders of horizontal regimes can adjust their pace of construction in response to a slowing market, while vertical regimes cannot. However, in recent years, some of the largest lawsuits in Hawai'i have been filed against horizontal projects, causing overall costs of litigation to begin converging between market segments.

Condos are a particularly large part of the housing market in Hawai'i relative to elsewhere (U.S. Census Bureau, 2023), and tend to be a more affordable homeownership option as well. If legal liability concerns discourage developers from building these types of projects in the future, Hawai'i's housing market could grow even more challenging for would-be homebuyers.

4. Potential impacts on mortgage finance and homeownership

Costs for Homebuyers

In general, construction liability litigation reduces the availability and increases the cost of mortgage financing, making homeownership more difficult to attain. Government agencies and private lenders take precautions while a lawsuit is pending, because the existence of serious defects could affect the value of the home and, by extension, the risk of default. Therefore, homes under litigation are ineligible for public financing through the FHA (Federal Housing Administration), VA (Department of Veterans Affairs), USDA (U.S. Department of Agriculture) and other agencies. The loss of public subsidy is particularly acute for lower-income households and first-time homebuyers, whose ability to purchase is typically more dependent on the lower mortgage rates and down-payments associated with public programs.

Those with the incomes and credit scores to qualify for conventional mortgages may still do so; however, loans on homes under litigation are also ineligible for sale on the secondary mortgage market. Portfolio loans—those that remain on the balance sheet of the lender who originated the mortgage—are riskier and less profitable to lenders than those that can be quickly resold. As a result, mortgage lenders are more cautious about financing projects involved in litigation. Some follow FHA guidelines and do not lend at all. Others continue to lend but manage risk by rationing credit: limiting the number of mortgages they issue to a small proportion of the units, imposing higher interest rates, and in some cases tightening their underwriting standards.

The inclusion of “litigation premiums” or “adders”, which can range from 0.25% to 1% depending on the perceived risk associated with the loan, make it harder for buyers to qualify and increase the overall cost of homeownership. For an \$800,000 home with a 20% down payment, each 0.25% increase over current market interest rates adds \$100 per month to a mortgage payment, or \$36,000 over the lifetime of the loan. The practice of pre-filing, discussed previously, can trigger these effects even while affected parties are negotiating their dispute through the CRA.

Costs for Homeowners and Homesellers

Somewhat counterintuitively, prolonged construction liability cases can also harm plaintiffs, even if they prevail in court. Pending litigation largely prevents homeowners from refinancing their current mortgage or accessing their equity. HOAs and homeowners may also be instructed not to make repairs during litigation, leading to a backlog of deferred maintenance. While it seems logical that homes under litigation would also sell for less, experts have found no clear correlation between sale prices and pending defect litigation in Hawai'i. In a market with constrained supply and rising prices, affected homes often continue appreciating at the same rate as the broader market, as buyers may be forced to accept less attractive options due to limited inventory.

However, litigation can still create financial burdens for homeowners, particularly those looking to move or refinance before their mortgage term ends. Although a standard mortgage term is 30 years, homeowners often sell or refinance within 7–8 years. Given that construction defect claims in Hawai'i can be filed up to 10 years after construction and lawsuits often last 3–7 years, many homeowners will find themselves needing to refinance or sell while litigation is still pending. Because lenders treat refinancing as equivalent to issuing a new mortgage, affected homeowners may lose access to conventional financing options, government-backed loans, and competitive interest rates. Additionally, homeowners will have difficulty tapping into their home equity through second mortgages or home equity lines of credit (HELOCs), creating liquidity challenges. These financial impacts are, in effect, hidden costs of litigation that are rarely discussed with homeowners before they decide whether to join a lawsuit.

For those looking to sell, legal disclosure requirements present another challenge. Homeowners must disclose pending litigation to prospective buyers and their lenders, introducing uncertainty that can limit buyer interest. While litigation does not necessarily reduce sale prices in Hawai'i's constrained housing market, it may narrow the pool of potential buyers, particularly for more expensive properties where purchasers can afford to be more selective. After a case is resolved, most sellers and their representatives continue to disclose its existence to avoid liability claims for misrepresentation. This disclosure may have a small, lingering effect on long-term appreciation if no repairs were made—particularly in cases where defects were cosmetic rather than structural, settlement funds were insufficient to cover full repairs, or owners disagreed on how to proceed.

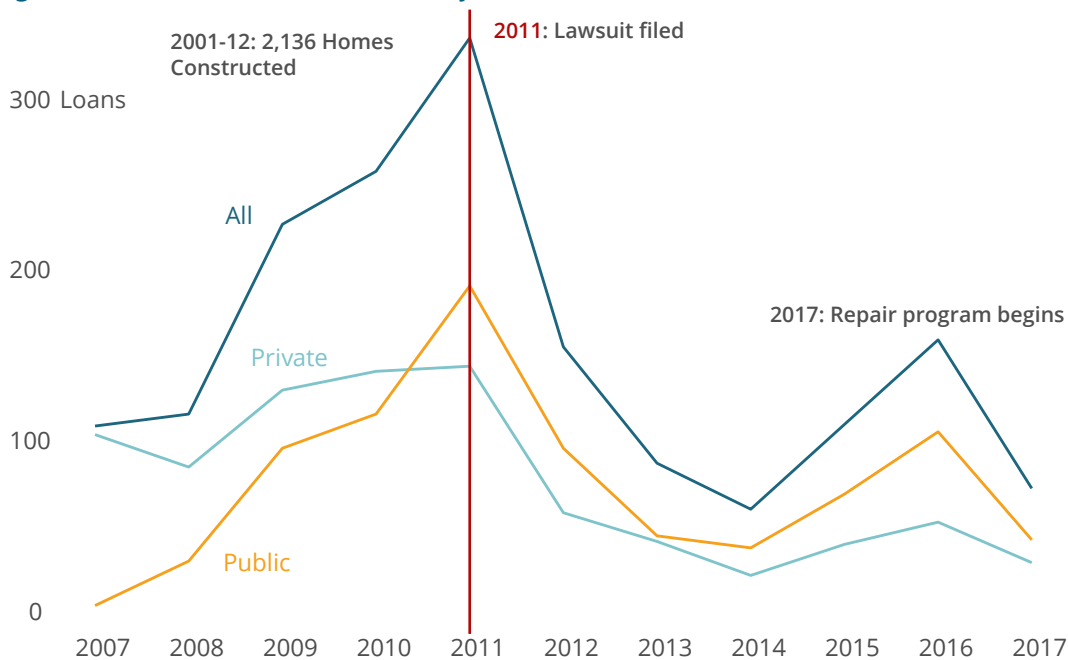
Construction defect litigation and the CRA are important legal mechanisms that allow homeowners to seek compensation for flaws in design and construction. However, these downsides of litigating, including liquidity constraints on homeowners and limited financing options for homebuyers, may not be obvious to plaintiffs as the potential upsides. In addition to these opportunity costs, the transaction costs of litigating, including legal fees, are a large share of any settlement.

Example: *Nishimura v. Gentry Homes*

In 2011, a lawsuit was filed against Gentry Homes regarding the installation of defective hurricane straps in 2,136 homes built between 2001 and 2012. Plaintiffs alleged that the Simpson Strong-Tie hurricane straps used in the development were prone to premature corrosion, potentially compromising structural integrity. As noted earlier, homes involved in active litigation are ineligible for government-backed loans and may also face difficulties securing private financing.

To verify the financial impact of the lawsuit on homeowners, we analyze mortgage loan data from 2007 to 2017 using the Home Mortgage Disclosure Act (HMDA) database. Mortgage counts in HMDA are reported at the census tract level, and because tract boundaries were redrawn in 2010, we use a post-2010 tract that encompasses the Gentry Homes development. For pre-2010 years, we apply population-weighted adjustments to approximate mortgage counts in the affected area.

Figure 5: Refinanced Loans in Ewa Gentry, 2007-2017



Data is from the national Home Mortgage Disclosure Act. A drop in mortgage refinance activity can be observed after the initiation of the construction liability lawsuit in 2011.

The homes affected by the lawsuit were sold before litigation began, meaning that homeowners had already secured their initial mortgages. Instead of looking at new home purchases, we examine refinanced loans to capture how litigation affected existing homeowners' ability to access better mortgage terms or tap into home equity. This approach also allows us to exclude new construction in the area, ensuring that our analysis focuses only on the homes involved in the lawsuit.

From 2011 to 2014, refinanced loan activity in the affected census tract dropped 82%, while refinances statewide declined by 42%. The impact was especially pronounced for government-backed "public" loans (FHA, VA, etc.), which are particularly sensitive to pending litigation. In the affected area, public loan refinances fell by 88%, compared to a 23% decline statewide. This suggests that homeowners seeking to refinance faced significant barriers to securing more favorable mortgage terms, particularly those relying on public financing. Additionally, prospective buyers looking to purchase homes in the development would have encountered the same restrictions, potentially limiting the pool of eligible buyers and complicating sales.

In 2017, the parties in *Nishimura v. Gentry Homes* reached a settlement that established a repair program to replace the defective hurricane straps with foundation anchor bolts. The \$90,341,565 settlement was divided into two main categories:

- 60% (\$54,378,981) was allocated to the Hurricane Straps Repair Program, which covered administrative costs and a Notice Plan to inform homeowners about the settlement terms.
- 40% (\$35,962,583) was designated for attorney fees, court costs, and other expenses, including taxes, Special Master fees (for overseeing settlement distribution and case management), and Class Representative incentive awards.

This case illustrates how construction defect litigation can impose significant financial constraints on homeowners, limiting their ability to refinance or access home equity—consequences that persist for years before a resolution is reached.

Example: Pending Case²

A 309-unit multifamily condominium project in a master-planned community near a HART rail station on O'ahu began construction in March 2022, with the first building initially scheduled for completion in June 2023. The project was designed primarily for first-time homebuyers.

On May 3, 2023, plaintiffs in a class action lawsuit alleging construction defects within the master-planned community filed a motion for class certification, which included units from this condominium project—even though it was still under construction. The lawsuit claims that galvanized metal foundation components, such as sill tracks, embedded shot pins, and metal-embedded anchors, have led to premature corrosion in both single-family homes and condominiums.

The filing of this motion had immediate consequences for mortgage lending at the project. Government-backed loans—including FHA, USDA, VA, Fannie Mae, and Freddie Mac financing—became unavailable. These programs prohibit participation in multifamily condominium projects with pending litigation, leaving approximately 250 buyers with fewer financing options. As a result, buyers could only obtain portfolio mortgage loans, which require stricter financial qualifications, including a minimum 20% down payment. Financial institutions offering these loans also imposed caps on the total number of loans per building and, in some cases, raised mortgage interest rates to account for litigation risk.

Before this motion was filed in May 2023, approximately 81% of more than 1,900 similar condominium units in the area had been purchased using FHA, VA, USDA, Fannie Mae, or Freddie

² We have redacted the name of the case and complex to avoid a) any suggestion of taking sides in a pending case and b) exacerbating any of the potential negative effects we outline above.

Mac loans, many with down payments below 20%. The unavailability of these financing options not only affected new buyers but also reduced future refinancing and resale opportunities, as future buyers relying on these programs may face similar restrictions.

Beyond financing impacts, the motion for class certification temporarily halted over 800 workforce housing units that were permit-ready and awaiting construction. Litigation in this case remains ongoing.

5. Discussion

It is important to underscore the limitations of this study. The findings are based on a subset of publicly available litigation data and do not capture disputes settled outside of the court system, therefore underestimating the full impacts of construction defects on the housing market. Many cases are settled confidentially, meaning that our researchers are unable to review or verify settlement terms or case details. Parties are likewise unable to speak freely about pending litigation. Furthermore, housing costs and homeownership rates are influenced by numerous interrelated factors, making it difficult to isolate the specific impact of construction defect liability claims.

The Challenge of Building Housing in Hawai'i

Housing production in Hawai'i faces a long list of challenges, including high material and labor costs, high land values, infrastructure constraints, and a restrictive regulatory environment. Construction defect liability claims add to project costs and represent an additional challenge to builders. To avoid the threat of litigation, developers may decide to produce more rental housing rather than for-sale units. The production of more rental housing could be a benefit to local renters, who are on average lower-income than owner-occupiers. However, a bigger concern is that future projects will be scaled-back, or not proposed at all, because developers cannot benefit from the more flexible financing options available with for-sale developments, and cannot sell units into the more lucrative for-sale market. A reduction in overall housing production reduces housing supply and ultimately contributes to high housing costs for all residents.

A reduction in overall housing production would also jeopardize affordable housing units because most market-rate developments include income-restricted units as a condition of approval. Three cases in recent years involved developments that included Hawai'i Community Development Authority (HCDA) reserved housing units and 201H-38 exemptions³. Both programs are examples of inclusionary zoning, a common affordable housing strategy at both the state and local level requiring developers to include a certain number of income-restricted units in their project, usually in exchange for relaxed regulations (density and height bonuses, etc.).

The threat of class-action lawsuits is a significant source of uncertainty for developers. Financial uncertainty is an important barrier to the production of housing in Hawai'i. Development capital is mobile, and seeks out projects with the highest returns and lowest risk. Similar to the costs imposed by a long and uncertain permitting process, construction liability lawsuits have become a soft cost that is embedded in the final price of new housing. To overcome the risks of developing housing in Hawai'i, investors will demand higher returns, which pushes up home prices. Reducing development uncertainty would encourage more housing construction, which could contribute to a more affordable housing market for local families.

³ The subsidized developments identified in construction defect cases were 988 Halekauwila St: 375 units (HCDA), 888 Kapiolani Blvd: 100 units (HCDA), and 1631 Kapiolani Blvd: 292 units (Ch. 201H-38).

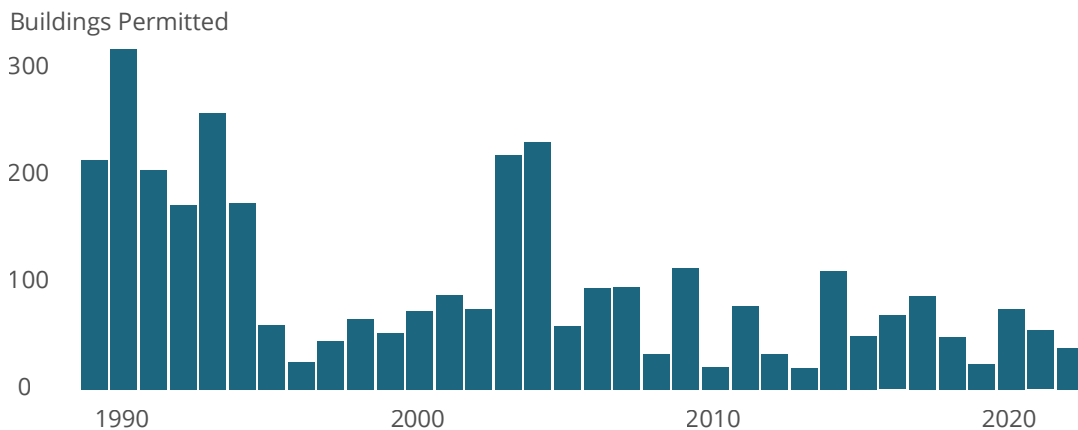
Additional Factors Considered

Several additional factors may contribute to a perceived increase in the cost and frequency of construction defect litigation in Hawai‘i, both in absolute terms and relative to other states. Hawai‘i’s unique weather and climate present significant challenges for building materials, particularly metal components, which feature prominently in defect cases as noted above. The combination of high humidity, salt-laden air, and continuous sun exposure can accelerate corrosion and degradation, leading to a greater likelihood of defects over time. These environmental factors may naturally elevate the rate of construction-related disputes, independent of any changes in the legal environment or industry practices. Policymakers could engage architects, contractors, building code officials, and academics in adapting national standards to local circumstances.

Hawai‘i’s housing market also differs significantly from other states in ways that may predispose it to higher rates of litigation. Honolulu’s high population density drives a greater reliance on both vertical construction and condominiums, which are prone to defect litigation as described previously. State-level comparisons can be misleading, as Hawai‘i’s unique housing mix and urban landscape differ markedly from mainland markets. Additionally, Hawai‘i’s high shipping and labor costs may increase the expense of repairing or replacing defective materials, inflating the costs of settlements and insurance premiums even if the frequency of defects remains consistent. Policymakers might also limit the cost of construction liability litigation and improve housing affordability indirectly by seeking to reduce the cost of construction inputs.

A potential driver of recent litigation is the development boom in Kaka‘ako, which saw a surge in high-rise condominium projects over the past decade. Because Hawai‘i’s statute of repose for construction defect claims is 10 years, this period may have resulted in an artificial spike in litigation as projects from that era reach the end of their liability period. This timing coincidence could skew perceptions, making litigation appear more frequent when it is simply concentrated around a specific development cycle. However, as shown in Figure 1, housing production has slowed considerably from the 1970s and 1980s, when construction defect cases were relatively rare. Figure 2 shows that cases were already increasing in frequency and scope before the Kaka‘ako boom. Figure 6 displays the total number of multi-family buildings permitted in the state from 1990–2023. Even focusing on multifamily construction, the current condo “boom” is modest in terms of the number of new projects, which is considerably lower than during the 1990s or mid-2000s. The number of multifamily buildings (5+ units) permitted from 2014 to 2023 declined by 62% compared to the 1990s. Although the average number of units per building increased, the total units permitted in these buildings were still 26% lower than in the 1990s.

Figure 6: Multifamily Buildings with Five or More Units Permitted State-wide, 1990-2023



U.S. Census Bureau Building Permits Survey, Multifamily Buildings.

Another possible driver would be a decline in average build quality, perhaps as a result of weakening standards, unscrupulous actors, or unskilled laborers. However, the data do not bear out any of these explanations. Except for the most recent cycle, Hawai'i typically updates its building codes every 3 years, aligning with the International Building Code Council's recommended cadence. If developers build to progressively stricter codes, as their approved permits and inspections imply, then average build quality should be improving over time. Even so, changing and increasingly complex codes may leave room for differing interpretations and expectations between builders and owners.

If declining workmanship or cost-cutting were the key issue instead, we would expect to observe defect claims arising sporadically over time, concentrated among a subset of developers with poor construction practices. Instead, our cases dataset suggests that claims arise in waves against multiple large-scale developers for the same issue at the same time. Developers have a strong incentive to avoid defect claims for both financial and reputational reasons. If there were a serious question about the suitability of certain designs, materials, or practices, it is unlikely that developers acting independently with distinct architects, engineers, and contractors would converge on them. Moreover, Hawai'i's consistently robust construction unions make unskilled labor an unlikely explanation for a rising trend.

Delays and complications in Hawai'i's permitting and inspection processes may also exacerbate the issue of construction defects, though this is more speculative. Lengthy approval timelines and inspection delays may impose time pressure on developers, contractors, and laborers, leading to condensed construction schedules. These conditions could affect the quality of workmanship and increase the incidence of defects, which may then fuel litigation. Collectively, these factors suggest that Hawai'i's challenges with construction defect litigation are influenced by unique environmental, economic, and regulatory dynamics in addition to our legal framework.

Potential Avenues for Improving Construction Defect Outcomes

Policymakers seeking to reduce the cost and frequency of construction defect litigation in Hawai'i could consider targeted reforms addressing both the legal framework and the underlying factors contributing to disputes. However, regulatory reform must confront a difficult tradeoff between preserving the rights of homeowners to hold developers accountable for substandard work, while ensuring developer liability is not so expansive that they are unwilling to construct new housing.

Revising the state's Contractor Repair Act to promote dispute resolution outside of court is one potential solution. For example, expanding "right-to-repair" laws could allow developers and contractors an opportunity to address alleged defects before litigation is filed, ensuring faster and more cost-effective resolutions for homeowners. Additionally, introducing tiered liability periods based on the type of construction or shortening the statute of repose for defect claims could reduce financial uncertainty for developers and incentivize housing production.

Improving stakeholder education is another area to consider. Offering training programs for condominium associations could help them better understand defect liability, their responsibilities to owners, and when litigation is appropriate. In cases where life and safety are at stake, policymakers could empower courts to mandate immediate repairs and place settlement funds in escrow to ensure that the funds are used exclusively for necessary repairs. This approach prioritizes public safety and ensures resources are directed toward addressing critical defects rather than prolonged legal battles.

To address other factors that may be contributing to defect claims, policymakers could improve Hawai'i's permitting and inspection processes to reduce delays and uncertainty in construction timelines. Streamlining regulatory requirements, hiring additional inspectors, and providing training programs for inspection professionals could help detect and remedy defects during construction. Furthermore, programs to incentivize the use of climate-adapted materials—such as corrosion-resistant components and environmentally adaptive building techniques—could

help reduce defects caused by Hawai'i's unique weather conditions. Tax credits or grants for developers adopting these measures could further encourage their widespread use.

Collectively, these measures—legal reforms, stakeholder education, improved processes, and enhanced materials—could lower the frequency and cost of construction defect litigation while supporting the development of safer, more affordable housing in Hawai'i.

6. Conclusion

Construction defect litigation is an emerging factor in Hawai'i's housing market, contributing to higher costs, financing challenges, and reduced homeownership opportunities. While legal action provides homeowners with an essential avenue to address legitimate defects, the rising frequency and scale of litigation have broad economic implications and raise questions about the efficiency of the current Contractor Repair Act process. Builders face increased costs from design and material changes, rising insurance premiums, and legal expenses, which in turn make housing more expensive and may discourage the development of new, for-sale homes—particularly condominiums, which are a critical source of attainably priced housing.

For homebuyers, construction defect lawsuits create financing barriers by limiting access to government-backed mortgages and raising borrowing costs on affected units. Homeowners involved in litigation may struggle to refinance or access home equity, potentially facing liquidity challenges even as they seek to remedy construction issues. These constraints illustrate the broader tradeoffs between consumer protections and the need to sustain housing production.

Adjustments to the CRA, improvements to Hawai'i's permitting and inspection processes, and application of lessons from other states could reduce costs without undermining homeowner protections. Policymakers could explore strategies to encourage prompt defect resolution, ensure that settlements prioritize necessary repairs, and create financial mechanisms that lower the overall cost of dispute resolution. By addressing these challenges, Hawai'i can progress toward a more predictable and sustainable development environment, supporting long-term policy goals of increasing housing supply and affordability.

References

- Common Sense Institute. (2024). The Decline of Condominium Construction in Colorado. Commonsenseinstituteus.org. <https://www.commonsenseinstituteus.org/colorado/research/housing-and-our-community/the-decline-of-condominium-construction-in-colorado-addressing-litigation-reform-to-alleviate-the-housing-affordability-crisis>
- CHAPTER 87--H.F.No. 1538, no. 1538, House (2017). <https://www.revisor.mn.gov/laws/2017/0/Session+Law/Chapter/87/>
- Housing Affordability Institute. (2023, June 21). Case Study: Multifamily Construction Defect Reform in Minnesota. Housing Affordability Institute. <https://www.housingaffordabilityinstitute.org/policy-center/multifamily-construction-defect-reform/>
- Inafuku, R., Tyndall, J., & Bonham, C. (2022). Measuring the Burden of Housing Regulation in Hawaii. <https://uhero.hawaii.edu/wp-content/uploads/2022/04/MeasuringTheBurdenOfHousingRegulationInHawaii.pdf>
- Minnesota Legislature. (2017). Session law: Chapter 87--H.F. No. 470. Revisor of Statutes, State of Minnesota. <https://www.revisor.mn.gov/laws/2017/0/Session+Law/Chapter/87/>
- Muhammad Alameldin. (2025, January 14). Construction Defect Liability in California: How Reform Could Increase Affordable Homeownership Opportunities - Turner Center. Turner Center. <https://turnercenter.berkeley.edu/research-and-policy/construction-defect-liability/>
- Relating To Construction Defects, no. SB2340, Senate (2024). https://www.capitol.hawaii.gov/sessions/session2024/bills/SB2340_.HTM
- Relating To Construction, no. SB2606, Senate (2024a). https://www.capitol.hawaii.gov/sessions/session2024/bills/SB2606_.HTM
- Relating To Construction, no. SB2607, Senate (2024b). https://www.capitol.hawaii.gov/sessions/session2024/bills/SB2607_.HTM
- Relating To The Contractor Repair Act, no. HB2213, House (2024). https://www.capitol.hawaii.gov/sessions/session2024/bills/HB2213_.HTM
- Relating To Limitations Of Actions, no. SB921, Senate (2023). https://www.capitol.hawaii.gov/sessions/session2023/bills/SB921_.HTM
- U.S. Census Bureau. (1990–2023). Annual new privately owned housing units completed. Building Permits Survey. U.S. Census Bureau. <https://www.census.gov/construction/bps/index.html>
- U.S. Census Bureau, U.S. Department of Commerce. (2023). Units in Structure. American Community Survey, ACS 5-Year Estimates Detailed Tables, Table B25024. Retrieved March 6, 2025, from <https://data.census.gov/table/ACSDT5Y2023.B25024?q=B25024&g=010XX00US0400000&moe=false&tp=true>.

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