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VIA E-MAIL (hrules.exhibits@oregonlegislature.gov)

House Committee on Rules
Oregon House of Representatives
900 Court St. NE
Salem, Oregon 97301

Re: Support for HB 3432

Dear Members of the House Committee on Rules:

My name is Jacob Zahniser. I am a partner at Miller Nash Graham & Dunn. I have represented home owners, condominium and homeowner associations, developers, contractors, subcontractors, and designers in a host of disputes. I have brought construction defect claims on behalf of condominium and homeowner associations. I have defended construction defect claims brought by condominium and homeowner associations. I write in support of HB 3432; based on my experience, HB 3432 will remove what many of my builder-clients view as an impediment to building condominiums – the near certainty that if they build or work on a condominium project they will be sued anytime up to 10 years from completion of the project.

To put this into perspective, most people and small businesses keep records for a few years. For example, the IRS recommends tax records be kept for at least 3 years, but as long as 7 years depending on the filing. *See https://www.irs.gov/businesses/small-businesses-self-employed/how-long-should-i-keep-records*. Oregon law requires licensed real estate property managers and principal real estate brokers to maintain real estate activity records for 6 years. ORS 696.280(4).

However, contractors are routinely drug into court, sued eight or nine years after a project is complete, based on a single document showing some involvement in the condominium project. The contractor tenders the defense to its carrier and hopes the carrier picks up. Frequently, no one remembers the contractor's precise scope, but a single page bid or some other nominal documentation is enough for the plaintiff's attorney to haul the contractor into court, nearly a decade after the project is complete, demanding hundreds of thousands of dollars, exponentially more than what the builder was actually paid for the work.

HB 3432 encourages developers and contractors to re-enter the condominium market. HB 3432 does this in various laudable ways. First, there is an educational component. HB 3432 calls for the development of up-front building envelope inspections for housing controlled by owner associations to reduce the risk of any building envelope defects to consumers before the project is built. In this manner, HB 3432 follows the ago old adage *a stitch in time saves nine.*

Next, HB 3432 shortens the period of ultimate repose for construction defect claims from ten to six years. The 10-year ultimate repose period is distinct from the statutes of limitation governing the various types of claims that may be brought against a contractor, though the end result is the same. After the ultimate repose period lapses, all actions arising out of the construction of a condominium, regardless of legal theory, are barred. As discussed above, a six year ultimate repose period encourages developers and contractors to re-enter the condominium market by reducing the total transaction cost of an extended ten-year liability period.

Next, HB 3432 streamlines and encourages a productive dialogue between the condominium and homeowner association and the builder. All too often by the time the notice of defect letter is sent, the owners association has engaged a lawyer more interested in maximizing the contingent fee than actually curing the defect. By the time the notice of defect letter is sent, the board members, laypeople volunteering for the position, have received a report from a building inspector setting out a laundry list of purported defects and an exorbitant bid from a repair contractor. There is more often than not an attorney coordinating the inspection and bid process with a professional property manager, all of whom have long-standing professional relationships. Absent from this conversation is the voice of the builder. HB 3432 brings in the builder's voice before the proverbial battle lines are drawn. In my experience, many builders stand-by their projects, are proud of what they built, and want to correct legitimate defects in the work. If the alleged defect is questionably illegitimate (i.e., it is not based on the relevant standard in effect at the time), the board members should be made aware of this in a non-confrontation setting.

Further, HB 3432 empowers the individual unit owners with a voice in the decision making process. While current law requires the owners association to notify the unit owners 10 days before a lawsuit is filed, giving the unit owner the option to "opt out" of the litigation, ORS 100.490, this passive "opt out" process is a far cry from affirmatively opting in to the lawsuit. HB 3432 would require more than just the three or five members of a board to approve protracted and expensive litigation, impacting a unit owner's ability to sell their unit for a year or more. The individual unit owners should have a voice in whether they want to be involved in a lawsuit: they will be the ones unable to sell their units; they will be the ones paying any special assessments; they will be the ones gathering and producing their documents, including e-mails going back years; and they will be the ones testifying at deposition or trial. Before being exposed to these burdens, the unit owners themselves, in true democratic fashion, should be given the opportunity to hear from the builder and inspectors, weight the estimated cost of repair and the builder's offer with the pros and cons of litigation, and then make an informed decision about the actual merits of the proposed litigation.

For these reasons, I support HB 3432. While not a panacea to the affordable housing crisis gripping our state, HB 3432 is a step in the right direction, encouraging developers and

contractors to re-enter condominium market. I am happy to discuss my support in further detail. I can be reached at (503) 205-2352 or at jacob.zahniser@millernash.com. I thank you for your interest in this important matter.

Sincerely,

Jacob Zahniser